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The Solicitors' Journal

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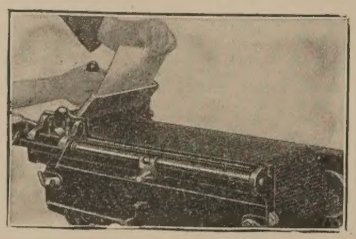

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The Solicitors' Journal

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*** Notices to Subscribers and Contributors will be found on page iv.

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Current Topics.

The Judicial Committee.

BY THE death of Lord SINHA, who was the first Indian to be raised to the peerage, the Judicial Committee has been robbed of one of its distinguished representatives of the law as administered in our great Eastern Empire. He was appointed to that position in 1926 under s. 1 of the Judicial Committee Act, 1833, which, after providing that the Lord President of the Council, the Lord Chancellor and certain holders of high judicial office, shall be members of the Committee, goes on to enact that "it shall be lawful for His Majesty from time to time, as and when he shall think fit, by his sign manual, to appoint any two other persons, being Privy Councillors, to be members of the said Committee." It was under this proviso that Lord SINHA was nominated, and that of itself is a mark of rare distinction. So far as we can recall, Lord JAMES OF HEREFORD was the first to be appointed under this clause, and after him Viscount HALDANE, Lord PARMOOR and the late Lord OXFORD AND ASQUITH were similarly appointed. Lord SINHA's inclusion, like that of Mr. AMEER ALI (who, however, was appointed under s. 30 of the Act of 1833), was an assurance to our Indian fellow-subjects that the British Empire seeks to do its utmost to secure that appeals from their courts shall be disposed of by those possessing a complete knowledge of the exceedingly diverse subjects involved in Indian appeals, so many of which are remote from the class of work falling to purely English judges. It is true that on the Committee are several English members who have acted as judges in India, but from the native point of view the Privy Council as an appellate body became more impressive and more effective when those of Indian birth, trained in the laws of India, became associated with the English members in the appellate work of the Committee. That great tribunal is certainly the poorer by the death of Lord SINHA.

Two Notable Lawyers.

DURING THE past week death has been busy in the ranks of notable lawyers. Besides Lord SINHA, whose services on the Judicial Committee are referred to separately, toll has been taken of the veteran Sir HARRY POLAND, who had well-nigh completed his century, and of Mr. J. G. PEASE, for whom many years of active service might have been predicted. Of Sir HARRY POLAND, who was called to the Bar as long ago as 1851, only those of mature years in the profession can recall him in harness, but those who can remember him at the Bar recognised how great he was in his own particular line. With every detail of the criminal law at his finger-ends, and with a cool unimpassioned style of advocacy, he was a deadly prosecutor, and when, later, he resigned his position as Treasury Counsel at the Old Bailey, and took silk, he was no less effective in the defence of prisoners. Nearly seventy years ago he published a little book on Trade Marks, a subject somewhat remote from that with which his name was subsequently associated, namely, criminal law and procedure, on which he could speak as one having authority. But whatever he did he did with all his might. It is many years since he retired from practice, and to the younger generation he was little more than a name; nevertheless, his passing is the removal of one of the landmarks of the law. Compared with Sir HARRY, Mr. J. G. PEASE was quite a junior, yet into his life he had packed a large amount of excellent work, done carefully and without ostentation. For many years, as a lecturer for the Council of Legal Education, he helped in the training of a host of aspirants for the Bar, and by his admirably clear and well-arranged treatise on Contracts he laid students and practitioners alike under a debt of gratitude. Many will deplore his early death.

Bargaining Away the Right to Appeal.

IN THE case of *R.* v. *Pollitt and others*, before the Court of Criminal Appeal, on the 20th and 24th ult., some comment was made by the Court upon the appeal being brought at all, as an assurance had been given to the Recorder that there would be no appeal. The appeal was heard, the LORD CHIEF JUSTICE, when delivering judgment, contenting himself with saying that the statement that there would be no appeal must be taken as an admission that there was no ground for one. But it is, perhaps, not altogether satisfactory that rights of appeal should be renounced in a criminal case, either by way of seeking a lighter sentence or for any other reason, and, perhaps, the present case may be taken as a warning against an undesirable course of action.

Moneylenders' Certificates. Public Hearing of Applications.

The Times reports a metropolitan police magistrate, sitting at the North London Police-court, as saying that the necessary publicity in these cases was defeated by hearing them before the public was admitted to the court. These cases should, of course, be taken in open court, and, so far as we are aware, are so taken at other courts. The magistrate's remedy was a simple one, to order the admission of the public, and, presumably, this was done. It cannot be too greatly emphasised that publicity is the safeguard of justice. Cases should be heard with closed doors only under the express authority of a statute, or within the very strict limitations imposed by the common law as expressed in *Scott* v. *Scott* (see page 77, *ante*).

Companies and Super-tax.

THE LIABILITY of companies to super-tax under s. 31 of the Finance Act, 1927, is not so clearly defined as to be free from doubt as to what companies are included. It is certain, however, that all companies within the meaning of the Companies Act, 1908, are embraced, and, as a correspondent points

out, s. 285 of the Companies Act, 1908, defines a "company" as any company formed or registered under that Act, or any then existing company formed and registered under the Joint Stock Companies Acts or the Companies Act, 1862. It will therefore be seen that companies incorporated prior to the 1908 Act will not be exempt from the tax, because they were brought within the provisions of that Act automatically. Section 31 of the Finance Act, 1927, applies to all companies which are under the control of more than five persons, provided that they are not subsidiary companies, or companies in which the public are substantially interested. A subsidiary company, for this purpose, is one in which, by reason of the beneficial ownership of shares therein, the control is in the hands of a company to which the provisions of the section do not apply. A company in which the public are substantially interested is one where the shares (other than preference shares) carry at least 25 per cent. of the voting power and have been allotted unconditionally to the public.

Maintenance Order and Unfaithful Wives.

Mr. Justice Swift, when dealing with nearly fifty matrimonial causes at Manchester Assizes, expressed himself as shocked and grieved. According to a newspaper report, he said: "The more I sit in these courts the more startled I am at the ease with which an unfaithful wife appears to get a maintenance order in the police courts, and the respectable husband finds himself in the police court because he cannot pay. I must have heard three or four cases to-day in which perfectly respectable husbands have proved perfectly good cases of unfaithfulness on the part of their wives and have still been ordered to pay maintenance and in one case sent to prison for not paying." We have not so far come across much complaint that unfaithful wives are able to obtain police court orders, and we should have thought that in most cases any unfaithfulness by the wife would probably be discovered and proved in court if it took place while the parties were still living together or were contemplating proceedings. Clearly, however, the learned judge must have had good reason for making such strong remarks. What we believe may be more prevalent, however, though it is difficult to obtain statistical information, is the case of the wife who, having obtained a maintenance order, goes on enforcing it against her husband while either living with another man or committing occasional acts of adultery. Husband and wife, maybe, have drifted entirely apart and each knows little of the manner of life of the other. Occasionally the husband hears rumours about his wife, but is unable to substantiate them by satisfactory evidence. Poor people, unable to obtain professional assistance in the preparation of a case, find the proof of adultery almost impossible. Sometimes the birth of a child affords incontrovertible evidence of misconduct. Even here, however, the wronged husband may find himself out of time, if the discovery be made more than six months after the last provable act of adultery: *Waller* v. *Waller*, 1927, W.N. 71; and, his summary remedy being not available, he must needs attempt the more difficult task of proceeding in the divorce court. The inadmissibility of his own evidence to bastardise a child, assuming there is no separation order in existence, adds one more puzzle to his troubled mind. Mr. Justice Swift's observations should at least serve to remind magistrates of the importance of close investigation of these matrimonial tangles.

"All my Money."

That the use of colloquial "brevities" by testators may often lead to undesirable results and the eventual incurring unnecessarily of legal costs, is well exemplified by a recent probate motion, which was the subject of a considered judgment by the learned President: *Re Gates*, *Times*, 16th ult., where the court was called upon to determine the meaning of a will, which merely stated "I leave all my money to C." This case has this peculiarity in that there was no context to guide the court as to the intentions of the testator, and in this respect it differs from previous cases in which there was, at any rate, some context to serve as a guide. The main principles governing the interpretation of such ambiguous provisions contained in a will or other testamentary disposition will be found to have been clearly laid down by Kay, L.J., in *Re Cadogan*, 1884, 25 Ch. D., at p. 157, following *Prichard* v. *Prichard*, L.R. 11, Eq. 232, viz., that "there should be no absolute technical meaning given to such a word as 'money' in a will, but that its meaning in every case must depend upon the context, if there is any, which can explain it, and upon the surrounding circumstances, which the court is bound to take into consideration in determining the construction," cf., also in *Re Bramley*, 1902, P. 106. In *Re Gates*, the court had no context to guide it, and had to fall back therefore on the surrounding circumstances alone, the learned President coming to the conclusion, on a consideration of the same, that the testator had thereby disposed of all his estate, which included cash in the house, money on current account at the bank, and stocks and shares, with the exception, however, of furniture and the equity of redemption of certain freehold property. It may be appropriate to observe that the employment of the word "all" in conjunction with the word "money" had the effect of extending the application of the latter expression, and that had the testator employed the expression "all" simply, the whole of his property including the furniture and the equities of redemption, as well, would thereby have passed. The observations of the learned President should also be borne in mind that the meanings of words become modified from time to time, and that a word or words used to express one meaning with regard to one subject-matter or one set of circumstances, may have a different meaning when applied to a different matter or in other circumstances.

Jurisdiction of Courts over Internal Management of Trade Union.

The decision of Mr. Justice Astbury in *Cox* v. *National Union of Foundry Workers of Great Britain and Ireland*, *Times*, 2nd March, 1928, deals with two important points of trade union law, which might usefully be noted. In this case the rules of a union provided for the payment of certain amounts by way of superannuation benefit and funeral benefit, and, by a further rule, no amendments of the rules themselves were to be made except by the vote of members or by the rules revision committee. Owing to the financial difficulties of the union, the executive council of the union passed resolutions lowering temporarily the amount payable in respect of superannuation and of funeral benefit. This action was challenged by one of the members of the union as being *ultra vires* on the ground, *inter alia*, that there had been no proper alteration of the rules, and that accordingly the resolutions of the executive council could not legally be acted upon, the plaintiff claiming a declaration accordingly that the resolutions were *ultra vires*, and an injunction restraining the union from acting thereon. Now it is a recognised principle of law that the courts will not interfere with the internal management of an association, whether it be a company as in *McDougall* v. *Gardiner*, 1876, 1 Ch. 13, or a trade union, as in *Steele* v. *S. Wales Miners' Federation*, 1907, 1 K.B. 316. The principle was thus expressed by Mellish, L.J., in the former case, *ib.*, at p. 25: "If the thing complained of is a thing which in substance the majority of the company are entitled to do or if something has been done irregularly which the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the company are entitled to legally, there can be no use in having litigation about it, the ultimate end of which is that a meeting has to be called, and then, ultimately, the majority gets its wishes."

Direct Enforcement of Trade Union Contracts.

THERE WAS a further ground, however, on which the action in *Cox's Case* could not be maintained, viz., that it was brought in violation of the rule contained in s. 4 (3) (*a*) of the Trade Union Act, 1871, which provides that " nothing in that Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, viz., . . . (3) Any agreement for the application of the funds of a Trade Union . . . (*a*) to provide benefits to members . . ." The question of what amounts to a direct enforcement within the meaning of s. 4 of the Trade Union Act, 1871, has been considered in a number of cases, and has been the subject of a great deal of litigation, and on the authorities, it seems clear that the action in *Cox* v. *National Union of Foundry Workers* was one which infringed the section, for, as Lord WRENBURY pointed out in *Braithwaite's Case*, 1922, 2 A.C. 469—" the use of the word ' directly ' does not infer or imply that a court may indirectly enforce in the sense that it may make an order which by indirect means will have the effect of enforcing in fact." Thus, had the declaration and injunction been granted in this case, the resolution would have been avoided, and the plaintiff would have been put in the position of being legally entitled to demand the full rate of payment. Reference may again be made to Lord DAVEY'S observations in *Howden's Case*, 1905, A.C. 270—" Where the primary object of the action is to enforce the agreement and the right of the plaintiff to maintain the action is founded on his right to have the rules observed . . . the action must be deemed to be one for directly enforcing the agreement."

Patria Potestas.

THE MISTRESS of a domestic servant, aged twenty years, recently applied to Mr. HAY HALKETT, the Marylebone magistrate, for advice in respect of the girl. It appeared that the latter's father was about to emigrate to Canada with his family, and strongly desired his daughter to accompany him. She, however, feeling comfortable in service, objected to do so. The father had threatened " a magistrate's order " against her, and so, in the circumstances both mistress and maid sought Mr. HALKETT'S assistance. The latter, according to the report, " had an impression " that the father could not interfere with a daughter of that age, who was not living under his roof, but recommended that the mistress should keep her at home until the man sailed, in case he should attempt to kidnap her. Comment may perhaps be made that the course advised did not imply a very robust faith in the administrative abilities of the officers enforcing the King's peace. Either the father had the right to the custody of the daughter, against her will, and that of her mistress, or he had not that right. If he had, the advice given was in violation of the right. If he had not, it was in effect that the guardians of the law were powerless to protect a presumably able-bodied young woman, in possession of her full senses, against being openly kidnapped in the streets of London. The law is, in fact, so vague as to the exact rights of a parent over a child during the few years before majority, that a magistrate or anybody else may be forgiven for hesitation, so possibly the advice given was clouded by doubt. In *R.* v. *Inhabitants of Lytchet Matraverse*, 1827, 7 B. & C. 226, the uncompromising common law doctrine that a child is under the dominion of a father until majority was affirmed, saving for the higher control of the SOVEREIGN over a minor in his service, or a husband over a wife. In *R.* v. *Gyngall*, 1893, 2 Q.B. 232, ESHER, M.R., observes (p. 239) " there comes an age at which the court could not say that the parent's right continued to exist." A. L. SMITH, L.J., also refers to the age of sixteen as that of " emancipation." This case, breaking into the parent's strict rights in consideration of the child's welfare, was followed in *re Mathieson*, 1918, 87 L.J., Ch. 445, and received statutory recognition in s. 1 of the Guardianship of Infants Act, 1925. See also *Thomasset* v. *Thomasset*, 1894, p. 295. Assuming that it would be inconceivable for an English court to order a girl happily in service at Hampstead to go to Canada at her father's dictation, a strong caution to the latter by a police officer would appear to have been indicated, together with a recommendation to the girl fearlessly to pass and repass on the King's highway.

The Doctrine of " Acting in Concert."

THE APPLICATION of the above sometimes gives rise to a feeling of injustice not only among convicted persons but also among the general public. Had the perpetrators of the crime been discovered, the doctrine would have received prominence about two years ago in the following circumstances. A jeweller's shop window in a main street of a provincial city was smashed, and trays of rings were seized by a man who jumped into a waiting motor car. The latter was driven away at a very fast speed, and in turning into a side street, it ran over a girl, who afterwards died from her injuries. The shop breaker, the driver, and a confederate in the other front seat—who knocked certain persons off the running board—would all in law, have been guilty of murder. No doubt efforts would have been made to obtain a verdict of manslaughter, as in one sense (*a*) if the men were unarmed there was no motive or intent to murder; and (*b*) the unfortunate death of the girl was a pure accident. The doctrine is constantly applied in cases of burglary and housebreaking, where one man forces the door or window and steals the goods, and another man keeps guard outside. The latter will often protest that he cannot be guilty, as, although he was certainly waiting for a friend near by, he does not even know exactly where the house is, and the man who broke in is a complete stranger. In cases of conspiracy the prosecution may prove that goods delivered to a certain merchant and not paid for, were always disposed of by the same retailer. It is then a question for the jury whether the series of coincidences, as described by the defence, are evidence of acting in concert, as alleged by the prosecution. Besides, the Accessories and Abettors Act, 1861, there are numerous statutes, dealing with particular offences, which provide for the indictment and punishment of principals in the second degree as principal offenders.

Secondary Evidence of Document.

IT IS A general rule of evidence that no secondary evidence of a document which is in the possession of the other party may be given, unless a notice to produce the same has been duly served by the person who is seeking to give secondary evidence thereof. An important and interesting exception to this rule, however, is illustrated by the recent case of *Tutt* v. *Tutt & Wood*, 165, L.T. 55. In that case, on the trial of an undefended petition for dissolution, the petitioner sought to give oral evidence of certain letters which he alleged he had found in the respondent's handbag, and which, after reading, he had replaced. No notice to produce was served, nor could have been served on the respondent, since the addresses of both the respondent and the co-respondent were unknown to the petitioner, the service of the petition having been effected by substituted service by leave of the court. The learned President admitted secondary evidence of the letters, acting upon the observations made by the judge ordinary in *Case* v. *Case*, 1860, 2 Sw. & T. 65. In that case the learned judge pronounced no opinion on the facts as to the admissibility of the evidence, the husband, being accessible, and therefore able to be served, but the learned judge observed that it might be a denial of justice to exclude such evidence, although no notice to produce had been served in some cases, as, for example, where a petition was allowed to be proceeded with without service or where service was effected in some distant country, and no appearance entered. As far as we are aware, *Tutt* v. *Tutt* appears to be the first case in which the principle suggested in *Case* v. *Case* has been applied in practice.

Speculative Actions & Professional Honour.

ENGLISH lawyers may perhaps make the claim that no higher standard of honour than that set for them by their own governing bodies has ever been required of any body of professional men. No vocation, however, contains a hundred per cent. of honest persons and the vigilance of the Law Society and the Bar Council is always needed. It seems hardly necessary to observe that the former body has the more anxious task, because its black sheeps' opportunities for mischief are so much the greater. And, on the ragged edge of the profession, there are certain practitioners deliberately seeking business, the profits of which largely depend on the fact that their clients are ignorant or uneducated people, who are unable to protect themselves against their own advisers. A favourite method of this class is discussed in para. 11 of the Final Report of the Committee on Legal Aid for the Poor (Cd. 3016, 1928). This is based on the fact that a street accident is a promising basis for an action for damages. Such a firm will often work with a so-called "Legal Aid Society," which may be little more than a mere agency for them and perhaps others.

This agency, probably through paid "runners," or street loafers, obtains early news of an accident, and information to which hospital the victim has been taken. It will then endeavour to get in touch with him, sometimes even bribing subordinate hospital officials for this purpose. In a typical case, a man has accidentally been knocked down by a motor-car, and both the society and the solicitor behind it can assume with much confidence that the owner of the car, through insurance or otherwise, is in a position to pay substantial damages. If the society's touts succeed, the victim of the accident places his case in the solicitor's hands, and a claim is made. Later, there may be a suggestion of compromise. Perhaps the owner's or insurer's solicitors can guess the character of the poor man's adviser, but the risk and trouble of such actions give opportunity for something which is little better than blackmail, and compromise may be advised as the lesser evil. And so the money is paid to the solicitor, who of course retains the lion's share of it for himself and the touting agency. If defence is recommended and the matter is fought to the final issue of judgment for the defendant, the speculative solicitor loses, for his client has not enough money to pay his bill. But in such cases the dice are always loaded against the ignorant plaintiff and in favour of his solicitor, because the defendant and his advisers, in considering a compromise, naturally take into account their own prospective costs, for the plaintiff would be unable to pay them in any case.

No doubt other speculative actions are possible. Dickens has immortalised one kind in *Bardell* v. *Pickwick*. Another field is that of libel—and in the present state of the law, an author has to bet with fate that he can invent a name for his villain for which a speculative solicitor of the type in question cannot find a living owner. The lowest depth is reached in the blackmailing action or threat of it, light on which was furnished by the revealed activities of the man HOBBS in the "Mr. A." case a few years ago.

Of course, when a speculative action of this kind comes into court, the judge has certain powers, and perhaps might be given more. The suggestion is made on p. 998, vol. 71, that a plaintiff who cannot give security for costs should not recover any—a useful little reform which would hit, not the plaintiff, but his legal adviser. Another suggestion, requiring no reform, would be more frequent exercise of the power of ordering the solicitor to the plaintiff, in a case which should not have been brought, personally to pay the defendant's costs. The committee mentioned above, in their final report, earnestly appeal (para. 20) to both branches of the profession to strengthen and develop the legitimate legal aid societies, usually formed under the auspices of one of the recognised political parties, or, in the metropolis, the London Council of Social Service. The committee deprecates a "legal hospital" system, observing that, whereas it is in the interest of the State that its citizens should be healthy, it is not so that they should be litigious. Perhaps the answer may be made that, whether litigious or otherwise, justice should not be placed out of the reach even of the humblest. Indeed, the fact that it may be so gives the *Dodson and Fogg* variety of practitioners their opportunity.

All actions are speculative in the sense that the result cannot be accurately foreseen, but those here discussed have the common feature that the client cannot pay his solicitor's costs unless he wins. This places the client at a great disadvantage in dealing with his legal adviser, and the abuses which have often followed have naturally thrown much discredit on those who take up this class of case. The Bar indeed, may be said almost fanatically to repudiate the principle of emolument following success, and the fate of counsel who agreed to take five guineas if he succeeded and three if he failed, and the fact came to the official notice of his benchers, would be a hard one. An abject apology and promise never so heinously to offend again, could alone save his professional life. The Law Society is somewhat easier, but the practice, though tolerated, is not looked upon with favour.

It is perhaps a paradox that, in business, payment by results is not only openly tolerated, but is the foundation of modern commerce. Engineers who designed and contractors who constructed a bridge would not expect full payment if it buckled or broke, although they had done their best. And a provision merchant, who supplied rotten eggs for human consumption, would not succeed in an action for their price on the plea that he had exerted all his business skill to procure fresh ones.

Without pressing the analogy too far, the suggestion may be worth considering whether, in cases of poor and comparatively poor persons, a franker recognition that even professional men are apt to work better with some hope of direct professional reward than none at all, may not be the best check on the shady practitioners who prey on ignorance. Such men often have extensive knowledge of practice, and are likely to have more skill than the young lawyers, who, however creditably, are ready to work for nothing. Legitimate profit derived from success would be attractive as a business proposition to a straightforward and enterprising firm—or even to a young and enterprising barrister, who must now, in Mr. KIPLING'S pungent phrase "take up cases for nothing for the credit they never bring him," or leave them alone.

Whether any such innovation is possible or not, the circumstances disclosed in the committee's report certainly indicate the desirability of better *liaison* between hospitals and local law societies, though there appears to be no definite recommendation to this end. Notices in accident wards and out-patient departments warning patients against the touts, and recommending that they should ask the nurses and doctors their best course, might at least be useful in some cases. The nurses and doctors would of course, through the hospital secretary or otherwise, place the patient in touch with the local Law Society, so that, in a proper case, damages obtained would go to the person injured instead of a lawyer who had no regard for his client's interests. Hospitals often have honorary legal advisers, who would have a good moral claim to recommendation.

The problem of justice to the poor must always be a difficult one, and the question whether they are best served by professional volunteers or men working in the ordinary course for their living is in addition highly controversial. The very similar problem confronting the medical profession has of late tended to the latter solution, especially under the National Insurance Act, and through the venereal diseases clinics, each of these schemes receiving State aid. The immutable

fact to be faced by both branches of the legal profession is that a certain number of people who cannot afford to pay costs will continue to have good causes of action, sometimes requiring high skill to present to a judge—and if that skill either necessarily falls below the standard which the defendant's money can procure him, or is exerted to make the fruits of the action fall into the pocket of the plaintiff's adviser, the poor will suffer injustice.

Auctioneers' Commission.

In formulating a claim for the above, on a sale by private treaty, difficulties may arise by reason of the vague nature of the contract between the parties. The following appears to be typical of the facts in many cases: A houseowner interviews the auctioneer, who enters the particulars in his register, and—after finding a purchaser—sends in his bill. Now that owner-occupiers are so numerous, and also often unversed either in legal or business methods, the transaction may be abandoned through no fault of the auctioneer. On first inspection, the prospective purchaser may have been pleased with the house, and to clinch the bargain he pays a deposit. The vendor's receipt in such a case is usually a home-made one. Further investigations may reveal defects in the plumbing or the roof, and the purchaser wishes to cancel the agreement and to have his money back. The vendor's solicitor (now being consulted for the first time) is doubtful whether there is a memorandum or note of the agreement in writing to satisfy s. 40 of the Law of Property Act, 1925, formerly the Statute of Frauds. The vendor's receipt, for example, is not signed by the party to be charged—the defaulting purchaser. On the other hand, the vendor has the deposit, and nothing was said about a formal contract. An action for specific performance may quite possibly fail, so that the matter is settled by the deduction of the vendor's solicitor's costs from the deposit, and a division of the balance between the vendor and the purchaser. In the meantime the auctioneer only knows that the house has been sold, and in ignorance of the subsequent developments, he claims commission. His client, the vendor, denies liability, on the ground that the auctioneer did not find a purchaser—the transaction having failed to mature.

The implied contract, in these circumstances, may be gathered from cases such as *Knight, Frank and Rutley* v. *Gordon and others*, 39 T.L.R. 399. There was more to go upon in that case, as the plaintiffs had issued a printed leaflet setting out their terms of business. Mr. Justice Acton took the view that liability could be imposed on the plaintiffs' principals, the vendors, only when the sale was completed and the purchase price paid—except where it could be shown that non-completion, and subsequent non-payment of the purchase money, were due to some default or omission on the part of the vendor. In that event, the estate agent would be entitled to recover an amount (corresponding to the amount of commission due under the sale) as damages for breach of the contract which must always exist, viz., that the principal will not, by any default or omission on his part, prevent the agent from reaping the benefit of the services which he had rendered. The plaintiffs claimed £1,220 as commission on the sale of an estate for £77,500, of which £5,000 was paid as a deposit. Completion never took place, and the defendants paid into court £132 10s., being the amount due to the plaintiffs in respect of the deposit. The learned judge, on his view of the law as above, gave judgment for the defendants.

In a typical case such as that first mentioned, the specious argument may be put forward on behalf of the defendant, the vendor, that under the above judgment he is only liable for commission if the sale has not been completed by reason of "some default or omission on the part of the vendor." If, however, it is the purchaser who raises difficulties, the vendor being all the time anxious to complete—the default or omission is not on the part of the vendor, and he is not liable for commission. There is a fallacy underlying this argument, however, as the real reason the sale was not completed was owing to the vendor's default or omission (1) in not employing a solicitor and obtaining a binding contract; (2) having obtained a deposit, in not holding the purchaser to his bargain, by issuing a writ for specific performance.

Mr. Justice Acton further stated that the obligation on the auctioneer was to show that he had introduced a purchaser who was a ready, willing and able purchaser. This is a question of fact, but again, taking the typical case as an example—the purchaser is ready and willing if he makes an agreement. His subsequent repudiation does not disentitle the auctioneer to the commission he has already earned. The purchaser is "able" if he pays a reasonable deposit, thereby indicating that he is not a man-of-straw, as an auctioneer does not in law guarantee the solvency of prospective purchasers.

A Conveyancer's Diary.

Representation in respect of Land which ceased to be Settled on the Deceased's Death.

A correspondent has given us an admirable statement of what must now be the position in a number of cases where, after a general grant has been made in the first instance, a special grant has then been made, the latter referring specifically to settled land vested in the deceased, but ceasing to be settled land on the death. The matter appears to be one of great practical importance, and so it is proposed to discuss it at some length. We give the position practically as stated by our correspondent.

By a settlement of 1925, land was conveyed to the use of T.X. and T.Y., in fee simple, upon trust for A for life, with remainder, upon trust for sale and investment, the income to be divided between B and C during their joint lives, with certain trusts over. A vesting deed was duly executed in favour of A, who died in 1927, having made a will appointing B and C his executors. This will was proved "save and except land vested in the deceased settled previously to his death and not by his will." A special grant of probate was then made in favour of T.X. and T.Y., "the trustees at the date of A's death of settled land vested in A under the settlement dated, etc., and as such the executors as to the settled land limited to the said settled land." T.X. and T.Y., as personal representatives of A, in connexion with the land comprised in the settlement, executed a vesting assent in their own favour, in respect of such land as trustees for sale thereof. They proceeded to sell parts of the land and conveyances were executed in favour of various purchasers. It would appear from *Re Bridgett & Hayes*, 71 Sol. J. 910, that the land ceased to be settled land on the death of A, hence the Ad. of E.A., 1925, s. 22 (1), had no application. Thus, as T.X. and T.Y. were not executors of the land vested in A by the settlement, the grant in their favour was wrong on the face of it (see the words "as such" appearing in the grant), unless the decision in *Re Gibbings*, 71 Sol. J. 911, can be taken as an authority to the contrary.

The settlement came to an end on the death of A, and the land ceased to be settled land: see S.L.A., 1925, ss. 1 (7) and 3, by reason of the trust for sale.

The legal estate in the land vested (Ad. of E.A., 1925, ss. 1, 3 (1) (ii)) in B and C, the general executors of A, though the grant in their favour was limited to property "other than land settled prior to the death of A and not by his will." The property obviously came within this definition. The property would, however, appear by the special grant to

have been vested in T.X. and T.Y.; this grant ought never to have been made. The questions arising are:—

(1) Whether the above assumptions as to the state of the law are correct?

(2) If they are, what course ought the purchasers to adopt? Presumably it would be right to ask for the revocation of the special grant in favour of T.X. and T.Y. and for the grant to B and C, the executors of A, to be amended so as to include the property? These executors would then assent to the vesting in T.X. and T.Y. upon trust for sale, and the latter would execute further assurances in favour of the purchasers. In such case, would the purchasers be wise to do nothing, relying on the protection afforded them by s. 204 (1) of the L.P.A., 1925, and as a second line of defence maintaining that the grant was properly made under the authority of *Re Gibbings* (*supra*)?

(3) As all the property comprised in the settlement has not been sold, what line (if any) should T.X. and T.Y. take to perfect their title before offering the unsold portions for sale?

The only mistake which we can suggest in the above conclusions is that B and C, the general executors, after their grant has been amended, can, as respects land actually sold, assent to the same vesting in the former vendors; the assents should be made in favour of the respective purchasers. There can be no question but that B and C can assent to the land vesting in the purchasers in this case; see Ad. of E.A., 1925, s. 36 (1), and the note thereto "or otherwise" in Wolst. and Cherry, Vol. II, p. 531.

These assents would operate as further assurances and would not attract any stamp duty. The purchasers are entitled to have their titles confirmed under the implied covenants for further assurance.

As respects the land remaining unsold, the assent should be made in favour of T.X. and T.Y. on trust for sale.

We do not think this is a case where the purchasers can be expected to rely on L.P.A., 1925, s. 204, or any other special provision for validating the grants made in error.

Landlord and Tenant Notebook.

Double Value Contumacious Holding Over.

An interesting decision, in which the question as to what amounts to a contumacious holding over, was recently given by His Honour Judge Barnard Lailey, K.C., in *Dowding & Son Ltd.* v. *Mayor, etc., of the Borough of Southampton* (165 L.T. 194).

In this case a local authority had taken a lease of certain land belonging to the plaintiff for a short term in order to facilitate the execution of certain works which were being undertaken by them in connexion with the rebuilding of a bridge. On the expiry of the term the works had not then been completed, it being anticipated that a further period of about fifteen months would be necessary therefor. The local authority accordingly refused to give up possession, their chief contentions being that the continued occupation of the land was required in the public interest for the purpose of completing the rebuilding of the bridge, and further that it would have been open to them had they chosen compulsorily to have acquired possession of the whole or part of the demised land under s. 25 of the Highway Act, 1835. As the learned judge pointed out, however, even assuming that they could have exercised such a right, which was not conceded by the plaintiffs, they had not elected to do so, and their entry had been, not under the statute, but under contract, i.e., the lease in question.

Among the various questions raised in this case was whether the holding over in such circumstances amounted to a contumacious holding over so as to entitle the plaintiffs to claim double value under the statute 4 Geo. 2, c. 28.

The authorities on the question of "contumacious" holding over are not very numerous. In *Wright* v. *Smith*, 1805, 5 & 6 Esp. 203, Lord Chief Baron Macdonald, in delivering judgment, said (*ib.*, at p. 215) that the true construction of the statute appeared to be "That where there is clear contumacy in the tenant he shall be within the penalty of the Act; for *if there is any doubt; if he had any fair ground of defence, and that defence was* bona fide *taken*, it would be a hard construction to subject him to a penalty, for so it is called in the Act, for a fair assertion of his title."

Wright v. *Smith* was quoted with approval by Lord Ellenborough, C.J., in *Soulsby* v. *Newing*, 1808, 9 East. 310 (in which case it was held that an action for double value would lie even after the landlord had recovered in ejectment against the tenant), Lord Ellenborough observing (*ib.*, at p. 313) that "the decision of the Court of Exchequer in *Wright* v. *Smith* evidently proceeded on the ground that the statute only meant to apply to the case of a *wilful and contumacious holding over by the tenant*, after notice to quit, and *not to a* bona fide *holding over by mistake*." Again, in *Swinfen* v. *Bacon*, 1860, 6 H.N. 184, it was held, approving the above cases, that the tenant was not liable to double value since he had held over under a bona fide *doubt as to whether the plaintiff was the true landlord*.

It is not every mistake, however, that will save a tenant from liability to pay double value. The mistake must be a reasonable one in all the circumstances. Thus, in *Hirst* v. *Horne and Another*, 1840, 6 M. & W. 393, a notice to quit on the 1st July was served on two joint tenants of a farm, but possession was not delivered on the expiry thereof. It was alleged at the trial that in that part of the country there was a custom whereby the times of holding over were different from those in the lease, but this custom was not proved to apply to the tenancy in question. The point was further taken that there was accordingly no wilful holding over, since the defendant had a fair doubt as to the period when the tenancy expired, a doubt which was increased it was alleged by the uncertain terms of the notice to quit. It was held, notwithstanding, that the claim for double value succeeded since no fair doubt could be entertained in the circumstances as to the date of the termination of the tenancy.

Applying these tests to the facts in *Dowding & Son Ltd.* v. *Mayor, etc.. of Southampton*, the learned judge came to the conclusion that there had been a contumacious holding over; and it may be useful to quote the following passage from the judgment: "I think," said the learned judge, "the authorities go no further than this . . . that the lessee escapes the operation of the statute if he acts under *an honest mistake as to his position . . . in law . . .* There is no pretence of a suggestion that the plaintiff had *any misconception as to the plaintiffs' title or their own, or were under any mistake*; no room for the 'reasonable doubt' mentioned in *Hirst* v. *Horne*. They withheld possession simply because, having made a miscalculation as to time, it proved highly inconvenient to them to perform their contract and give up possession at the proper date."

COPYRIGHT ROYALTY (MECHANICAL MUSICAL INSTRUMENTS) INQUIRY.

The Board of Trade announce that the Committee appointed to inquire, under s. 19 of the Copyright Act, 1911, into the rate of royalty to be paid to the owners of copyright in musical works in respect of the making of records, etc., for the mechanical performance of such works, will commence their inquiry on Wednesday, 28th inst. The Committee will meet at 10.30 a.m. in the Conference Room, Board of Trade, Great George-street, London, S.W.1: and the inquiry will be continued on Thursday and Friday, 29th and 30th inst.

An application for an equitable increase in the rate of royalty has been made on behalf of a number of authors, composers and owners of musical copyright, and the application is opposed on behalf of the mechanical music industry.

Representatives of any interests substantially affected who desire to be heard at the inquiry should communicate with the Secretary to the Committee, Mr. B. G. Crewe, M.B.E., Industrial Property Department, 25, Southampton-buildings, London, W.C.2, not later than the 21st inst.

Our County Court Letter.

THE AGRICULTURAL HOLDINGS ACT, 1923.

THE validity of a notice to quit under the above Act, viz., whether such notice could be read as one document with the covering letter, was recently considered by His Honour Judge STAVELEY HILL at Stratford-upon-Avon County Court. The matter came before the court on a case stated by the arbitrator, to whom the matter had been referred under s. 16 of the above Act. The facts were as follows: On the 9th June, 1926, the landlord's agents posted to the tenant a letter in the following terms: "We will thank you to be so good as to pay the rent due from you," viz., at Lady-day. On the 12th August, 1926, a second letter was posted as follows: "Can you let us have the rent this week, as the landlord is pressing us for our account? On the 26th August 1926, the agents sent a notice to quit, and a letter as follows: "We are instructed by the landlord to send you the enclosed notice to quit at Michaelmas, 1927, owing to the rent due at Lady-day last not having been paid, although you have had written notice to pay. We beg to refer you to the provisions of the Agricultural Holdings Act, 1923, for non-payment of compensation for disturbance in cases where rent is in arrear." The tenant gave up possession on the 29th September, 1927, and subsequently claimed a sum equal to one year's rent, as compensation for disturbance. The landlord contended that he was not liable for compensation, on the grounds that (*a*) the tenant, at the date of the notice to quit, had failed to comply within a reasonable time with a notice in writing requiring him to pay the rent then due; (*b*) the notice to quit stated that it was given for such reason. The tenant contended on the contrary that as the notice to quit did not itself state the reason for which it was given, he was entitled to compensation in spite of his failure to comply with the notice to pay rent. The arbitrator submitted the following questions of law for the opinion of the court: (*a*) Whether the letters or either of them were sufficient notices in writing as required by s. 12 (1) (*b*) of the above Act, and, if so, (*b*) Whether the notice to quit sufficiently complied with s. 12 (1) of the above Act; and (*c*) Whether the letters and notice were properly served on the tenant in accordance with s. 53; (*d*) If compensation for disturbance was payable to the tenant, whether under s. 12 (8) the arbitrator should reduce the amount of such compensation by such sum as represented the reduction (if any) of the loss—attributable to the notice to quit—by reason of his continuing in possession of an adjoining holding.

The learned judge held that it was not necessary to answer (*a*) above, as he had decided with regard to (*b*) that the notice to quit did not state the reason and did not sufficiently comply with s. 12 (1) of the Act, so as to exclude compensation for disturbance. This defect was not cured by the covering letter. It was also not material for him to give an opinion on (*c*). With regard to (*d*) the reduction (if any) in the compensation was entirely a matter for the arbitrator.

Although it did not become material for the learned judge to give a decision on point (*c*), there had been some discussion as to the requirements with regard to service of s. 53, viz., "Any notice . . . under this Act may be served on the person to whom it is to be given, either personally or by leaving it for him at his last known place of abode . . . or by sending it through the post in a registered letter addressed to him there . . ." It was contended on behalf of the tenant that as the notice came by post, but was not registered, this was a fatal objection. On behalf of the landlord it was submitted that the section was not mandatory, but provided that "any notice . . . *may* be served . . ." As an *obiter dictum* the learned judge observed that neither the letters nor the notice were served in compliance with s. 53. But inasmuch as the case of the tenant depended on his having left the holding in consequence of the notice, such notice must be deemed to be duly served, and it was open to the arbitrator to find that the letter of the 26th August reached the tenant and that the enclosure became an effective notice.

The last observation illustrates the pitfalls of the Act, as it was apparently advisable for the tenant to admit rather than dispute the service.

Practice Notes.

DIVORCE.

THE first condition to be fulfilled by petitioners seeking relief in the Divorce Division is to show that the court has jurisdiction, the requirements for which vary considerably according to the nature of the relief prayed. Domicil of both parties in England founds the jurisdiction to grant all forms of relief, but something less is sufficient in some cases.

In a suit for dissolution of marriage the rule is that the husband, and consequently the wife, must be domiciled in England. There are, however, a few peculiar exceptions in circumstances of comparatively rare occurrence which will be dealt with in a later note.

A suit for nullity can be brought where the form of marriage took place in England or abroad under the Foreign Marriage Acts, or if the parties are resident in England at the time of the institution of the suit, or, where both parties are domiciled in England, the last ground being subject to the academic query as to whether on a petition for nullity by a foreigner having married a domiciled Englishman, and having acquired an English domicil solely thereby, strictly she can be said to have an English domicil by reason of the marriage which she asserts to be invalid. Residence of the parties in England at the time of the institution of the proceedings, founds a suit for judicial separation, although where both the parties are domiciled in England but the respondent is resident abroad the suit will be entertained. In a suit for restitution of conjugal rights, either domicil of the parties in England, or a matrimonial home in England at the date when cohabitation ceased, or residence of both parties in England at the time of the institution of the suit is necessary.

The court will take the point of want of jurisdiction against a petitioner where the same has not been pleaded, upon its emerging at any stage in the proceedings. The extreme requirement of domicil is demanded in cases of dissolution because the relief sought effects a change of status. The requirements to found jurisdiction where the other forms of relief are concerned follow from the nature of the respective suits.

A person served with a petition who wishes to deny jurisdiction should enter an appearance under protest. Such appearance must be in a form setting out the grounds of protest, e.g., that the respondent has never abandoned his Canadian domicil of origin, and is not domiciled in England.

The next step is a summons before a registrar for directions as to the method by which the question of jurisdiction shall be determined. Formerly an act on petition was ordered as of course. This is a separate pleading by the party denying jurisdiction, which must be separately answered. But now the general practice is for the registrar to order the matter to be disposed of upon an issue, the suit being stayed meanwhile. The statement of the issue is agreed and signed by the solicitors to the parties, viz.:—

A —— C D *v.* A —— E F.

Issue to be tried pursuant to Order, dated day of .

Whether or no the respondent was domiciled in England at the time of the institution of the suit.

P —— Q and Son, for respondent.

R and Co., for petitioner.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in duplicate. Each copy to contain the name and address of the subscriber. To meet the conveniences of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Undivided Shares—Unequal Purchase Money—Occupation Exclusively by One Tenant in Common—Remedies of the Other.

Q. 1169. In 1918 T.K. purchased a freehold farm which was conveyed to T.K. and his brother, S.K., as tenants in common. The bulk of the purchase money was paid by T.K. (Probably the arrangement to convey the property to the brothers as tenants in common without reference to the proportion of the purchase money paid by each was with a view to avoiding payment of income tax). S.K. went into occupation of the farm after completion, and has occupied it ever since without making any payment at all to his brother as interest on his share of the purchase money. The terms of a lease of the farm by the two brothers to S.K. have been finally settled. S.K. has, however, definitely refused to execute the lease, and T.K. can get no assurance that he, S.K., will give up the farm at Lady-day. S.K. has been in possession of the farm without making any payment of rent for over nine years, and is apparently merely delaying matters in the hope that his brother, T.K., who is over ninety years of age, will predecease him. T.K. now desires to obtain the value of his half share in the farm as it appears clear that as long as his brother remains in occupation he will get nothing from him and if he were allowed to remain in undisturbed possession after twelve years might claim the property. T.K. and S.K. now hold the property as joint tenants upon the statutory trusts. Consequently it is open to T.K. to offer the property for sale and to enter into a contract for sale, and having done so to compel S.K. to execute the necessary conveyance. The position, however, is aggravated by the fact that one of the joint owners is also in occupation, and that it would be extremely difficult to find a purchaser for the farm unless vacant possession could be given.

(1) In view of the fact that the purchase money of £3,900 (all but £460) was found by T.K., is T.K. entitled to receive on sale the value of the property in the proportion of £3,440 to £460 notwithstanding the conveyance to them as tenants in common without reference to the manner in which the purchase money was paid ?

(2) What action should be taken by T.K. to realise his share of the property ?

(3) It is doubtful in view of the present selling value of farms in the locality whether the price given in 1918 could now be obtained. Would T.K. be justified in selling the farm to a purchaser by private contract at the best price ?

A. The liability of one tenant in common to account to the others or other for profits made in respect of the sole enjoyment of the land owned by them was established under 4 Anne, c. 16, s. 27, in *Eason* v. *Henderson*, 1848, 12 Q.B. 986. That section was repealed by the L.P.(Am.)A., 1924, s. 10, and Sched. X, as "rendered obsolete" by the L.P.A., 1925, presumably because any joint tenant would now have to account as trustee in possession. There is, however, no legal process by which one trustee entering into a contract for sale can compel his co-trustee to carry it out; obviously there could not be, if both trustees are to exercise a discretion on the matter. On the facts stated T.K. should require an immediate account of the rents and profits from S.K. for the last six years, and, if he refuses or neglects to deliver it, should have recourse to the court, probably with an ancillary plea for administration of the trust and sale by the court, but the frame of the proceedings will be for counsel to consider having regard to all the circumstances.

In answer to the questions—

(1) Yes.

(2) As above; and it would probably be best to register the proceedings as a *lis pendens* against S.K.

(3) No. The price should be left to the court to fix.

Will—Settled Pecuniary Legacy—Appropriation—Interest—From what Date.

Q. 1170. A made his will in May, 1927, and after giving pecuniary legacies he gave and bequeathed his furniture to his wife B for life, and after her death it was to form part of his residuary estate. He gave to his trustees (three in number, of whom his wife is one) the sum of £8,000 upon trust to pay the income thereof to his wife during her lifetime if she should continue his widow, and after her death or second marriage he declared that the said sum should fall in and form part of his residuary estate. He made no other provision for his wife. He gave the residue of his estate to his three children equally. The estate consisted principally of ordinary shares in public companies. I shall be glad to know whether:—

(*a*) The trustees should sell shares to make up £8,000 and invest this in securities authorised by law ?

(*b*) Whether the widow is entitled to the income from the date of testator's death ?

A. (*a*) Yes, if the estate does not include any trust investments. If it does so, and assuming the trustees are also executors, they should appropriate any trust investments there may be towards the legacy, see A.E.A., 1925, s. 41, especially sub-s. (1) (ii) (*b*). Or if all persons interested are *sui juris*, the trustees can appropriate shares worth £8,000 (not being trust securities) and retain them on the written direction of all the beneficiaries on this behalf.

(*b*) The fact that the widow is to enjoy the income of or interest on the legacy does not take it out of the usual rule that it is payable only as from the anniversary of the testator's death, see *Re Bignold*, 1890, 45 C.D. 496—a strong case, for the legacy was there given in lieu of dower, which would have been payable as from the death.

Vendor and Purchaser—Sale of Realty by Executors—Undervalue—Purchaser's Notice.

Q. 1171. S, by his will dated January, 1925, appointed his nephews, M and N, executors thereof and gave all his property to his nephews and nieces, M, N, O and P, as tenants in common in equal shares. S died shortly after the date of his will, which was proved by M, power being reserved to N to prove the same. In May, 1925, M paid off a mortgage existing on certain of the testator's freeholds. On the 8th June, 1925, M conveyed to O by virtue of the powers conferred on him by the Land Transfer Act, 1897, part of the same freeholds, for the sum of £408, the conveyance containing no recitals beyond the usual as to will, death and probate and agreement for sale for that sum. On the same day O mortgages the property conveyed to him to X to secure the sum of £600.

(1) Is there evidence, upon the facts, that the consideration for the conveyance is not truly stated ?

(2) Can a purchaser insist upon an answer to a requisition asking for evidence of any further unexpressed consideration for the conveyance ?

(3) Is there any equitable rule which throws upon a purchaser-devisee an obligation to show that he gave a fair price for the land conveyed to him by an executor ?

(4) Can a purchaser insist upon having the stamp upon the conveyance mentioned submitted to the Adjudication Branch of the Inland Revenue?

A. A sale by an executor at an undervalue was set aside in *Rice* v. *Gordon*, 1848, 11 Beav. 265, and an undervalue on the face of the title (a sale by executors for £73 of property bought by their testator for £462) was held sufficient for rescission of a contract for sale in *Stevens* v. *Austen*, 1861, 7 Jur. N.S. 873. See also *Ewer* v. *Corbet*, 1723, 2 P. Wms. 147. In *Stevens* v. *Austen*, Hill, J., observed that the plaintiff as purchaser would have notice of the undervalue, and the opinion is here given that an immediate mortgage for half as much again as the purchase price would give such notice and place the next purchaser on enquiry. This would be express notice that the sale was not *primâ facie* a proper exercise of the executor's power of sale, but, having regard to the fact that O was a beneficiary, the transaction can in all probability be upheld if properly explained. But the purchaser is entitled to, and, for his own safety, must insist on such explanation. In answer to the questions—

(1) There is sufficient evidence to put the purchaser on enquiry.

(2) Yes, as above.

(3) A purchaser-devisee *quâ* purchaser is in the same position as any other person, but of course there may be appropriation or set-off. If his testator's estate was insolvent he would have to give full value.

(4) No. His remedy is to reject the title unless the vendor removes the blot on it in such a way that the purchaser and his assigns will have a good title.

Settled Land—Infant Co-Heiresses entitled subject to Dower—Attainment of Majority—Title.

Q. 1172. A, who owned freehold property at B, died intestate in 1916 leaving a widow and two infant spinsters, who inherited the property as co-heiresses, subject to the widow's right to dower. The property was therefore settled land. The widow obtained a grant of administration to the intestate's estate by direction of a judge of the Chancery Division. The widow and her brother were appointed trustees of the estate, and also trustees for the purposes of S.L.Acts, and conveyed the property to the infants in fee subject to the widow's right to receive one-third of the income of the property or the proceeds of sale in lieu of her right to dower. In 1918 the trustees sold the property and invested the greater part of the proceeds of sale in the purchase, in their names, of freehold property (in which the widow and daughters reside) at C, this being an investment of capital money under s. 21 (vii), S.L.A., 1882, but the property was conveyed to the trustees in fee simple without any trust being disclosed. All duties have been paid and the estate "cleared," and the trustees are transferring to the two daughters, who have now attained twenty-one years of age, their two-third shares in the residuary personal estate (the widow's one-third share having been previously transferred to her). Please advise in what mode the conveyance of the freehold property at C should be conveyed to the daughters, and what should be done to protect the widow's right to the one-third income of the proceeds of sale of the freehold estate at B now consisting in part of the investment in the freehold property at C and in other investments in authorised stocks and shares.

A. It is assumed for the purpose of this answer that both co-heiresses were still infants on 31st December, 1925, the land being then settled land. The difficult question whether co-parceners are joint tenants or entitled to undivided shares for the purposes of the L.P.A., 1925 (see answers to *Qs.* 702 and 827, pp. 189, 485, *ante*) need not be solved here. If they were entitled in undivided shares, the trustees of the settlement took upon trust for sale under the L.P.A., 1923, 1st Sched., Pt. IV, para. 1 (3). If co-parceners are joint tenants, the trustees continued to hold the legal estate, for it could not have shifted to infants, see Pt. II, para. 7 (*g*). Having regard to the right of dower the trustees should not transfer to the daughters except with the mother's concurrence. Probably the best course would be conveyance to the mother and daughters as joint tenants, impliedly giving them a trust for sale under s. 36 (1). As trustees they could then deal with the land having regard to the interests of each.

Effect of Marriage on a Wife's Domicil.

Q. 1173. A and B married in England, about eleven years ago. They lived together as man and wife for about two months, when B (the husband) deserted his wife, and she has not heard of him in any way since the desertion, although she has endeavoured to trace him. He is an American by birth, and probably returned to America. A (the wife) is now desirous of marrying again, but wishes to know if any application could be made to the divorce, or any other court, for a declaration to presume his death, or if any steps can be taken to set aside the marriage in order that she may legally marry again. It is understood that she could marry again now without rendering herself liable to a prosecution for bigamy, but in such an event as B turning up again (a thing not likely to happen) she wishes to prevent the now contemplated marriage from being set aside, and to secure that it would be a legal marriage.

A. A's only chance of entering on a second marriage which would be valid is by getting rid of the first. On the facts disclosed it would appear that A, for the purposes of divorce jurisdiction, is domiciled in America, having lost her English domicil on her marriage to B and acquired an American domicil which she retains. It may be, on that assumption, that A could obtain a divorce in the courts of the American State where B is domiciled, on the ground of desertion, which is no ground here. Domicil, however, does not found the jurisdiction of the court in suits of nullity, and the facts that the marriage was in England, and that the parties lived together here would enable A to institute proceedings for nullity here if she had grounds. No application could be made to any division of the court to presume B's death, nor is there any process save a petition for nullity by which A could secure the now contemplated marriage from the risk of being bigamous. It is not quite correct to say that A could marry again without rendering herself liable to a prosecution for bigamy. Rather, on B's re-appearance, the authorities would not be likely to prosecute A, and if they did so, A would have a defence upon which she would be acquitted.

Limited Company—Debenture-holders' Action—Receiver Appointed by the Court—Power to Sell Land.

Q. 1174. We are concerned in connexion with a purchase from a receiver for debenture-holders of a company incorporated under the Companies' Acts, 1908 and 1913. The title shown consists of the following: An order (made in a debenture-holders' action) appointing a receiver of all the property and assets of the company comprised in the debentures; and an order made in the same action declaring that the debenture-holders are entitled to a charge on the undertaking and property of the company and directing the usual accounts and enquiries. We should like to know whether in your opinion the receiver has made out a title to sell and to receive the purchase money. The Company will, of course be joined to convey the legal estate. No order directing or authorising a sale has been made. The debentures give an express power of sale to a receiver appointed by the debenture-holders out of court under a provision for this purpose in the usual form, but are silent as to a receiver appointed by the court. The debenture-holders' action is between the holders of the first and second mortgage debentures as plaintiffs, and the company and the holders of the third mortgage debentures as defendants, but it appears from the master's certificate of the result of the accounts and enquiries that fourth and fifth mortgage debentures are outstanding?

A. The mere appointment of a receiver by the court gives him limited powers: see judgment of Lord Atkinson in

Moss S.S. Co. v. *Whinney*, 1912, A.C. 254. The opinion is here given that, apart from direction by the court, he has no power of sale: see "Kerr on Receivers," 8th ed., p. 259. An order will therefore be required: see R.S.C., Ord. 51, r. 1B. But when the order has been made the sale will be unimpeachable: see L.P.A., 1925, s. 204 (1).

Settled Land—Sale by Tenant for Life—Title.

Q. 1175. In 1917 a testator by his will appointed his wife and his brother-in-law executors and trustees, and gave all his real and personal estate unto his trustees, upon trust after payment of his just debts, funeral and testamentary expenses, to hold the same for the use and benefit of his wife for her life, with power for his wife to carry on any business he may be engaged in at his death and employ therein any part of his money and personal estate without being answerable for any loss, and upon the death of his wife, in trust for his children in certain shares and proportions. The testator empowered his trustees with the consent in writing of his wife during her life to sell the whole or any part of his real and personal estate and apply the proceeds of sale and the income therefrom in the same manner as if such sale had not taken place. The testator died in 1922 and probate was granted to both the executors named therein. The widow has carried on the business until recently and she has now sold the property and business. The other executor died in July last. The surviving executor proposes to appoint new trustees. The point arises whether under the will the real estate is vested in the trustees on trust for sale, or whether on the date of the coming into force of the S.L.A., 1925, the legal estate vested in the widow as tenant for life. Will you please let me know therefore whether—

(1) A vesting deed is necessary, and if so, whether the same should be executed before or after the appointment of new trustees; and

(2) The trustees have power to sell by reason of the trust instrument or otherwise?

A. The will clearly gave the trustees a power as distinct from a trust for sale. This power has now passed to the widow under the S.L.A., 1925, s. 108 (2), and she took the legal estate on 1st January, 1926, under the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*). For the exercise of her power of sale an antecedent vesting deed is requisite: see S.L.A., 1925, s. 13. In answer to the questions put:—

(1) Yes, as above. The new trustees should be appointed before it is executed: see answer to *Q.* 269, p, 600, vol. 70.

(2) No. The power has shifted, as above.

Correspondence.

The Bishop of Lichfield and Separation or Divorce.

Sir,—The real difference between the Bishop of Lichfield and Mr. Justice Hill is that the former approaches marriage with the settled convictions of the ecclesiastic; based on the doctrine of the Church. He knows nothing of the case except the bare report and decides that all the wrong is on the side of the husband, and says: "When a poor woman is wronged by her husband she is scolded forsooth, by the judge, because she asks for a separation and not for a divorce." The latter approaches the question from the position of a judge who has to administer the laws with such judicial discretion as those laws allow. Mr. Justice Hill, continuously dealing with matrimonial disasters, having all the facts before him, and the opportunity to study the parties in these cases, sees what is the root cause of the trouble and how the law is being used by malice to serve its own ends, and mete out punishment. That one of our judges resents being made the instrument by which malice is served through the present law of divorce should surprise no one.

So long as the law says adultery alone, with its insistence on guilt and punishment, ends a marriage, we shall continue to have muddled thinking on this grave problem. It is time that people began to realise that adultery is not the beginning of the trouble in marriage, but in the vast majority of cases the end; in other words, there are many grave causes which conduce to the adultery. If these grave causes were sufficient to enable the aggrieved or injured party to obtain separation with economic adjustments on an equitable basis, and such separations were convertible into divorces after a safeguarding period to allow for reconciliations, there would be fewer unwanted and unloved children born; fewer irregular unions with illegitimate births, and less of the recrimination and malice which plays such a grave part in the cases under the present law. Divorce is only required to end a marriage legally; the marriage is in reality ended when either of the parties cannot or will not fulfil their obligations, and where a common life has become insupportable.

M. L. Seaton-Tiedeman,
Hon. Secretary,
The Divorce Law Reform Union.

55, Chancery-lane, W.C.2,
1st March.

Judicial Separation or Divorce.

Sir,—I thank you for your courteous note in reply to my letter on the above subject.

It seems to me that, if you rule out the two points which I raised in my first letter, you must fall back on the principle of the existing law, which is, that a wife is entitled to please herself whether she will apply for a judicial separation or a divorce.

Having regard to a wife's economic dependence, she is bound to ask for alimony to enable her to live, and she is surely entitled to do that without depriving herself of her status as a married woman, notwithstanding the desires of the guilty parties to regularise their status.

W. R.

Reviews.

A Digest of Equity. J. A. Strahan, M.A., Hon. LL.D.; Barrister-at-law. 1928. Fifth Edition. Cloth boards. Demy 8vo, pp. lxiii and 637. Butterworth & Co. Limited, Bell-yard, Temple Bar. 22s. 6d. net.

Strahan's "Equity" is too well known to the student to require any commendation. The new edition, containing the 1925 amendments, is naturally welcome. It contains a foreword on recent legislation, covering sixteen pages, in which an outline is given of the recent legislative changes in "equity." The text has been increased by only eighteen pages, the author adhering to his object which is to give "a bird's-eye view" of specific changes in sufficient detail for students' purposes. Some minor inaccuracies and *inelegentia* may be mentioned, so that they may be guarded against by students and corrected in the next edition. The words "in the absence of fraud" should have been included on p. 27, in the reference to T.A., 1925, s. 28. On p. 38 we have "*Now* by the Intestates Estate Act, 1884, an equitable fee simple is to escheat . . ." but on p. 39 we find "Recent legislation has for the future abolished in England . . . escheat . . ." and on p. 40: "Recent *legislature*" should read "Recent legislation," and the reference should be to p. liv, not xvi. Reference is made on p. 41 to "fees tail both *legal* and equitable" as subsisting under recent legislation. On pp. 43–44 it is said that "by s. 1 of the L.P.A., 1925, legal interests in land are confined to estates in fee simple and absolute terms of years . . . All *estates*, life estates, estates *pur autre vie* and *fees simple* are equitable!" We are told on p. 49 that: "on the death

of the owner intestate his real property whether freehold or *copyhold* and his personal property *henceforth* will descend in the same way." The reference to s. 34 of the T.A., 1925, at p. 64, seems too brief. On p. 87, 13 Eliz., c. 5, is quoted without reference to L.P.A., 1925, s. 172, which replaces it. At p. 91, reference might conveniently have been made to L.P.A., 1925, s. 205, and L.P. (Am.) A., 1926, s. 3, on trust corporations. It is worth noting that T.A., 1925, s. 36 (6), enables an additional trustee to be appointed even where no vacancy has occurred (pp. 94, 97); and the provisions of s. 39 of that Act, as to the retirement of trustees, could have been cited at p. 100. With regard to the rule in *Howe* v. *Dartmouth*, it would have been well to cite *Re Brooker*, 1926, W.N. 93, and *Re Trollope*, 1927, 1 Ch. 596. The provisions of S.L.A., 1925, s. 29 (4), whereby a conveyance of land to a charity no longer requires two witnesses, nor registration at the Central Office, have been overlooked at pp. 218–9. It is submitted that, although *Noakes* v. *Rice* and *Bradley* v. *Carrit* "appear to have been overruled" by *Kreglinger's Case*, the decisions may be reconciled; see p. 340 (*vide* "Cheshire, Real Property," 2nd ed., p. 577). In Article 151, dealing with Infants' Property, no reference is made to the Guardianship of Infants Act, 1925. On p. 486 *Lord Strathcona s.s. Co.* v. *Dominion Coal Co.*, 1926, A.C. 108, as to restrictive user of a chattel—could have been cited, and on p. 547, l. 11 from bottom, some esssential words have been omitted.

The above, as immediately appears, are minor amendments with which the new edition is well brought up to date. The general arrangement of the work is very suitable for students and the numerous cases cited are dealt with in a manner which could not be improved.

NOTES OF CASES.

House of Lords.

(Before Lords Buckmaster, Sumner, Wrenbury, Carson, and Warrington of Clyffe.)

Ducker *v.* **Rees Roturbo Development Syndicate, Limited.**

14th February.

INCOME TAX—SALE OF PATENTS—REALISATION OF CAPITAL OR TRADE PROFIT.

In this appeal the question was whether a sum received by the respondents for the disposal of certain foreign patent rights was to be taken into account as a receipt of their trade or business or was to be treated as a realisation of a capital asset and not liable to tax. In March 1912, the respondent company and Mr. Rees granted to the Manistee Company a licence to manufacture and sell their patented articles with an option to purchase, and that option was exercised. It was contended that the sale to the Manistee Company was a solitary disposition of part of their capital assets, and that the purchase price was not a trade receipt. The Commissioners decided that the profits were chargeable to tax.

Lord BUCKMASTER, in giving judgment, said that in the *Californian Copper Syndicate* v. *Harris*, 5 Tax Cas. 166, The Lord Justice Clerk said: "Is the sum of gain that has been made a mere enhancement of value by realising a security or is it a gain made in an operation of business for carrying out a scheme for profit making?" That principle had been approved by the Privy Council, and was, he thought, the right principle to apply. It was suggested that the Commissioners had applied the wrong test. He thought, however, that the Commissioners meant to find that the sum received by the Manistee Company was a receipt of the company's business as the Crown contended. It was impossible to say that the Commissioners had wrongly directed themselves or that there was not ample evidence to support their finding.

The other noble and learned Lords concurred.

COUNSEL: *The Attorney-General* (*Sir Douglas Hogg*, K.C.), *The Solicitor-General* (*Sir Thomas Inskip*, K.C.), and *R. P. Hills*; *Latter*, K.C., *J. Stamp* and *J. H. Bowe*.

SOLICITORS: *Solicitor to the Inland Revenue*; *Sharpe, Pritchard & Co.*, for *Underhill, Neve, Taylor & Co.*, Wolverhampton.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Merchants' Marine Insurance Co., Ltd. *v.* **Liverpool Marine and General Insurance Co., Ltd.** Rowlatt, J. 21st February

MARINE INSURANCE—CONDITIONS OF POLICY—RE-INSURANCE—VESSEL DAMAGED BY STRANDING—REPAIRED—SUBSEQUENT VOYAGE—LEAKING—VOLUNTARILY RUN ASHORE—WRECK—NOT DUE TO ORIGINAL STRANDING.

The steamship "Maradal," insured from 1st January to 31st December, 1925, was re-insured with the plaintiffs who re-insured their risk with the defendants. The policies were subject, *inter alia*, to the following conditions:—"In the event of the vessel not being at the place of destination on the date of the expiration of the policy the insurance shall continue in force till the end of the day when the vessel arrives at her first place of destination." "If the insured object is in a damaged condition at the time when the insurance expires . . . the risk shall continue for the immediate consequences of such damage until the object without unnecessary delay has been repaired or sold." After grounding at the beginning of January, when on a voyage from the Baltic to South Africa, the policy still being in force, the "Maradal" put into Luderitz, her first place of destination, and was in a damaged condition at the time the insurance expired. She was temporarily repaired and proceeded to Cape Town, but began leaking so badly that to prevent her sinking she was run ashore on Possession Island. Subsequently she was sold as a wreck for £500. The plaintiffs paid the original insurers as for a total loss, and claimed against their re-insurers, the defendants, who refused to pay.

ROWLATT, J., said that the real point of the case was whether, after leaving Luderitz, the vessel was lost as an immediate consequence of the damage suffered by the original stranding. When in harbour, at Luderitz, she was safe, and the leakage under control. In his view, the loss was not an immediate consequence of the stranding; she was lost when on a new voyage. Judgment for the defendants.

COUNSEL: *Raeburn*, K.C., and *R. I. Simey*, for the plaintiffs; *A. T. Miller*, K.C., and *H. Atkins*, for the defendants.

SOLICITORS: *Waltons & Co.*; *William A. Crump & Son*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.

Guildford Trust, Ltd. *v.* **Pohl and Maritch.**

Talbot, J. 27th February.

BILL OF EXCHANGE—DISHONOURED ON PRESENTATION—ACCEPTOR'S ALLEGED INCAPACITY—GOOD FAITH—FRAUD.

The plaintiffs in this action, a firm of registered money-lenders, claimed £250, the amount of a bill drawn by the defendant Maritch and accepted by the defendant Pohl on the 17th February, 1927. The bill was dishonoured on presentation. Final judgment was signed against Maritch, but Pohl, by her guardian *ad litem*, who was appointed on the 12th May, 1927, alleged that at all material times she was a person of unsound mind not so found by inquisition, or that by reason of feeble intellect she was incapable of understanding the nature or meaning of a bill of exchange. It was also denied that she accepted the bill. It was alleged that Maritch induced Pohl to sign a piece of paper by fraudulent representation, and subsequently without the knowledge or authority of Pohl, converted the piece of paper into a bill of exchange for £250.

TALBOT, J., said that the case of *Foster* v. *MacKinnon*, L.R. 4 C.P. 704, decided that when a person, by misrepresentation or incapacity to read, executed a document without intending to do that which the document did, then his mind did not go with the document, and he was not liable. He did not think that the evidence for the defendant showed that Pohl did not understand what she was doing. To avoid a contract on the ground of insanity it had to be shown that the plaintiff knew of the insanity. The plaintiffs had shown that they gave value in good faith and after reasonable inquiries. Judgment for the plaintiffs for £250, with costs.

COUNSEL: *Barrington-Ward*, K.C., and *H. J. Wallington* for the plaintiffs; *Jowitt*, K.C., and *St. John Field*, for the defendant.

SOLICITORS: *Woolfe & Woolfe; Kenneth Brown, Baker, Baker.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Brice and Sons *v.* Christiani and Nielsen.

Rowlatt, J. 28th February.

CRANE HIRED—ACCIDENT—LIABILITY OF HIRER FOR NEGLIGENCE—INSURANCE AGAINST ALL RISKS—FALLING OVER OF CRANE NOT COVERED.

The plaintiffs, owners of a number of barges fitted with steam cranes, lent one of them in March, 1927, to the defendants, engineering contractors, at a charge of £30 a week. The crane-barge, capable of lifting five tons, was used by the defendants in the repair of a jetty at the mouth of the Thames belonging to the Shell Mex Company and which had been damaged by a steamer. On the 31st March, when attempting to raise a portion of underwater wreckage secured and hooked on by a diver, the crane broke away from its bedplate, fell over and was seriously damaged. Under the contract of hire the plaintiffs agreed to insure the crane against all risks, the defendants paying the insurance premium. After the accident it was found that the policy taken out by the plaintiffs did not cover the risk of falling over. The plaintiffs claimed damages from the defendants, who refused to pay on the ground that the damage should have been covered by the insurance.

ROWLATT, J., said that when a person who hired the property of another handed it back in a damaged condition, he was liable unless he could show that the damage had not been caused by his negligence, and in this case he was of the opinion that the defendants had failed to prove that the damage was not the result of their negligence. In view of the point about insurance, however, he held that the defendants were entitled to succeed. The only question was whether the accident came within the description of "all risks"; he was of the opinion that it did. Judgment for the defendants, with costs.

COUNSEL: *Raeburn*, K.C., and *Dickinson*, for the plaintiffs; *Dunlop*, K.C., and *Willink*, for the defendants.

SOLICITORS: *Keene, Marsland, Bryden & Besant; Thos. Cooper & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Hain Steamship Co., Ltd. *v.* The Board of Trade.

Rowlatt, J. 1st March.

SHIP—REQUISITIONED—COLLISION—AFTER THE ARMISTICE—DUE TO NEGLIGENCE OF BOTH VESSELS—WARLIKE OPERATION.

On the 25th December, 1918, the "Trevanion," a British steamship belonging to the plaintiffs, and which was requisitioned by the Government under the T. 99 Charter-party in 1917, while on a voyage from the United States with a cargo of oats collided in mid-Atlantic with the "Roanoke," a steamer requisitioned by the United States Government and carrying a cargo of mines, no longer required for hostilities, from England to the United States. The "Roanoke" was a warship, and manned by a United States naval crew. The collision was due to the negligent navigation of both vessels. In consequence of the damage sustained by her the "Trevanion" was off hire for ninety-nine days. The plaintiffs alleged that the damage suffered by their vessel was the consequence of a warlike operation. This view was taken by the arbitrator to whom a case was referred, and he held that the shipowners were entitled to recover damages against the Crown. The Board of Trade appealed.

ROWLATT, J., held that the "Roanoke" was not engaged in a warlike operation, and gave judgment in favour of the Crown. Unless it could be said that a warship was always engaged in warlike operations the case was really unarguable.

COUNSEL: *The Attorney-General (Sir Douglas Hogg*, K.C.), and *Russell Davies* for the Crown; *Dunlop*, K.C., *Balloch*, and *Sanford Cole* for the respondents.

SOLICITORS: *Solicitor of the Board of Trade*; *Thomas Cooper and Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

In the Estate of Gates, Deceased. Lord Merrivale, P.

27th January and 15th February.

PROBATE—MOTION FOR GRANT OF ADMINISTRATION *cum testamento annexo*—EFFECT OF WORDS "ALL MY MONEY"—NON-CONTENTIOUS PROBATE RULES, 1926, r. 119.

The applicant on this probate motion was Mr. Alfred George Cabell, who claimed a grant of letters of administration with the will annexed, as universal legatee and devisee under the will which was in these terms: "I leave all my money to Alfred George Cabell." The estate consisted of money in the house and on current account at the bank, stocks and shares, furniture, and the equity of redemption in some house property, and was worth about £4,000. The respondent's next of kin claimed a similar grant on the ground that Mr. Cabell was entitled only to the money in the house and on current account at the bank, the two sums amounting to about £1,600.

Lord MERRIVALE, P., in the course of a considered judgment, said: The motion of the applicant is resisted on behalf of the next of kin on the ground of necessary strictness in the construction of testamentary instruments, which was applied in the decision of the Court of Appeal in Chancery in *Lowe* v. *Thomas*, 5 De G.M. and G. 315. The principles are embodied in these words in the judgment of Lord Justice Turner: 'It is necessary to adhere to the proper and correct sense of the words used in the will, where there is no context to give a different effect to them." By way of illustration of the application of the rule, counsel referred to numerous authorities covering a long period of time used in great variety of wills. In each of the cases cited before me, the court, in which the true construction of the language used by the various testators was to be determined, came to its conclusion as to the meaning of the words used in the instrument before it with some assistance from the context of the will. Here the sentence presented for construction has no context. The problem to be solved, however, is the same: What is the true meaning of the words used by the testator? An elementary consideration which is strongly emphasised by comparison of the older judgments with some of those more recent in date is that the meanings of words become modified from time to time in course of use. Another is that a word or words used to express the meaning with regard to the subject-matter, or the set of circumstances, may have a different meaning when applied to a different matter, or in other circumstances. My predecessor, Lord St. Helier, adopted in *In the Estate of Bramley*, 1902, P. 106, the declaration of Lord Justice Kay in *In re Cadogan*, 25 Ch. D. 154: "There should be no absolute technical meaning given to such a word as 'money'

in a will. Its meaning depends on the context if there is any, and upon those surrounding circumstances which the court is bound to take into consideration in determining the construction." It was not suggested on behalf of the next of kin in the argument before me that the testator's will operated only upon the small sum in notes or specie found among the testator's effects at his death. Counsel conceded that the balance on current account at the bank must be held to pass. The correct and proper use of the word "money" (*Lowe* v. *Thomas*, *supra*) in this will would extend, if that be so, to choses in action. If "money" in this will may include a debt due on demand from a banker, may it not include debt accruing due at a fixed date from the State, or a sum outstanding on a mortgage? May the word "all" extend it, as it was extended in some of the cases, so that the testator's bequest of all his money operated to include investments in stocks and shares? As every one knows, men often speak of "their money" when they describe all their assets or resources . . . Assume the testator to have intended to die testate, and to leave nothing undisposed of, I am left to determine what has actually been done by the words in which his will is expressed. I cannot find any indication that the testator used the word "money" to include either furniture or real estate. A gift of "all" would have passed them both. But the comprehensiveness of that term, it seems to me, is necessarily limited by the subject-matter, the testator's "money." The furniture and the cottages may well have been unthought of by the testator and at any rate they are not designated by the language employed by his amanuensis. The conclusion at which I have arrived is that this will disposes of all the testator's estate except the equity of redemption in the cottages and the furniture. By r. 119 of the Non-Contentious Business Rules, when a deceased person has died since 1st January, 1926, leaving a will whereby the estate is not wholly disposed of, the person entitled under an intestacy takes a grant of administration with the will annexed in priority to legatees or devisees. The motion therefore fails. The costs of the motion will be taxed as between solicitor and client, and will be provided out of the whole estate of the testator.

COUNSEL: *Owen Thompson*, K.C.; *Clifford Mortimer* and *William Latey*, for the applicant. *Spens*, K.C., and *Tyndale*, for the respondents.

SOLICITORS: *Bartlett and Gregory*, for *Bartlett and Sons*, Sherborne; *Reynolds, Sons and Gorst.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

Sussex Law Society.

(COMMUNICATED.)

The Annual Meeting of the Sussex Law Society was held on Wednesday, the 29th ult., amongst those present being: Messrs. B. Bunker, A. A. Baines, A. C. Borlase, H. Cane, R. A. Dendy, E. W. Hobbs, C. V. Johnson, Lt.-Col. S. T. Maynard, William Stevens, F. Bentham Stevens (Hon. Secretary), Charles Smith and L. F. M. Williams (Hon. Librarian) (Brighton); H. A. E. Hey (Arundel); T. W. Cutts, H. S. Chamberlain and J. E. Moxon (Bognor); E. H. Blaker (Chichester); W. H. Burt, A. C. Hillman, N. C. Hurst, C. W. Mayo, W. C. Parkin and G. F. Warren (Eastbourne); H. G. Baily, W. Carless, E. S. Douglas, W. C. Strickland, and Col. F. C. Langham (Hastings); R. Macdonald (Horsham); H. S. Gunson (Hayward's Heath); R. A. E. Hillman (Lewes); G. J. Campbell (Littlehampton); W. Dawes (Rye); E. M. Rollinson (Uckfield); and H. B. Piper (Worthing).

The meeting was preceded by a luncheon at the Old Ship Hotel, at which Mr. A. C. Hillman (the retiring President) was in the chair. His Honour Judge W. Moore Cann was present as the guest of the Society, and the only toast apart from the loyal toast was that of His Honour. In a humorous reply His Honour drew attention to the constant increase in the amount of work entrusted by Parliament to the county court, and to the fact that many solicitors who had not in the past appeared in the county court now found it necessary to do so, owing to the entirely different type of work at present being dealt with.

The meeting was held in the afternoon, when the annual report and balance sheet was presented. The report dealt with the Society's activities in various directions, and made special reference to the loss the Society had sustained during the past year by the death of a number of active members. A special sub-committee had carefully considered the Landlord and Tenant (No. 2) Bill, and submitted a number of suggestions to members of the House of Commons, and to the House of Lords, several of which, owing largely to the efforts of Lord Harris, were adopted, and subsequently embodied in the Act. The Committee had also on several occasions had before it difficulties which arise in conveyancing matters under the Town Planning Act, 1922, as to which useful information had been obtained from the several local authorities in Sussex and a synopsis of the same, with an explanatory circular had been issued to the members.

The report also dealt with the work of the Legal Aid Committee not only under the Poor Persons Rules, but also in connexion with the Poor Man's Lawyer and recorded the generous gift of £500 which had been received from the trustees of the will of the late Mrs. Elise Nixon for the work of the Poor Man's Lawyer.

Reference was also made to the successful establishment of the Sussex Board of Legal Studies, and to the approval of the board's classes as a law school under s. 2 of the Solicitors' Act, 1922. The board's system of legal education was the first approved in the provinces, where the sole responsibility rested with a Law Society.

Mr. Henry Cane (Brighton) was elected President of the Society in succession to Mr. A. C. Hillman (Eastbourne).

Col. C. Somers-Clarke relinquished the office of Hon. Treasurer, which he had held since 1912, when he succeeded his late partner Mr. J. W. Howlett, who had been Treasurer since the foundation of the Society in 1860 up to his death, which occurred in 1911. Mr. R. A. Dendy, the present senior partner of Messrs. Howlett & Clarke, was elected Hon. Treasurer in succession to Col. Somers-Clarke.

Mr. F. Bentham Stevens was re-elected Hon. Secretary, and the General Committee was elected as follows: Messrs. H. G. Baily, A. C. Borlase, G. F. Carr, W. Graham Hooper, S. T. Maynard, H. W. Port and Charles Smith.

Reference was made to the forthcoming provincial meeting of The Law Society, which, on the invitation of the Eastbourne Law Society, is to be held at Eastbourne from the 2nd to 5th October next, and Mr. N. C. Hurst (Secretary of the Eastbourne Law Society) gave an outline of the programme.

Law Students' Debating Society.

At a meeting of the society, held at The Law Society's Hall, on Tuesday, the 6th inst. (Chairman, Miss D. C. Johnson), the subject for debate was: "That this House considers that the facilities granted to persons to proceed in the High Court as 'poor persons' serve no useful purpose." Mr. Cecil Binney opened in the affirmative. Mr. E. G. M. Fletcher opened in the negative. The following members also spoke: Messrs. E. F. Iwi, J. H. G. Buller, H. R. Davies, W. M. Pleadwell, R. S. W. Bollard, J. K. Jackson. The opener having replied, the motion was lost by four votes. There were thirteen members and two visitors present.

Law Association.

The usual monthly meeting of the directors was held at The Law Society's Hall, on Thursday, the 1st inst., Mr. J. D. Arthur in the chair. The other directors present were: Mr. E. B. V. Christian, Mr. H. B. Curwen, Mr. P. E. Marshall, Mr. J. R. H. Molony, Mr. A. E. Pridham, Mr. John Venning, Mr. William Winterbotham, Mr. W. M. Woodhouse, and the secretary, Mr. E. E. Barron. A sum of £130 was voted in relief of deserving cases, and other general business transacted.

Mr. J. W. ALLEN NORTH, Solicitor (Messrs. North, Kirk and Co., 15 Lord-street, Liverpool), has resigned the position of Solicitor to the Litherland Urban District Council, which he had held for twenty-seven years.

The attention of the Legal Profession is called to the fact that THE PHŒNIX ASSURANCE COMPANY LTD., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22 Lincoln's Inn Fields, W.C.2; and throughout the country.

THE AUCTIONEERS' AND ESTATE AGENTS' INSTITUTE.

ANNUAL DINNER.

The thirty-seventh annual dinner of the Institute was held at the Connaught Rooms, on Friday evening last, when the President (Mr Alfred J. Burrows) occupied the chair, supported on either side by The Right Hon. Viscount Sumner, G.C.B., P.C. (Lord of Appeal) and the Hon. Mr. Justice Eve. In a notable assembly of some 400 or 500 members and their guests were included The Right Hon. The Earl of Mayo (President of The Land Agents' Society), Mr. J. M. Gatti, M.A., J.P. (Chairman of The London County Council), Sir Ernest Gowers, K.B.E., C.B. (Chairman of Board of Inland Revenue), Sir Francis Floud, K.C.B. (Chairman of Board of Customs and Excise), The Hon. R. Stafford Cripps, K.C., Mr. E. M. Konstam, C.B.E., K.C., Brigadier-General A. Maxwell, C.B., C.M.G., D.S.O., D.L. (President Chartered Institute of Secretaries), Sir Daniel Hall, K.C.B., LL.D., F.R.S. (Chief Scientific Adviser, Ministry of Agriculture), Sir Stanford Downing (Secretary Ecclesiastical Commission), Sir H. Courthope-Munroe, K.C., Mr. Thos. Williams (President National Farmers' Union), Mr. Chas. H. Gott, F.G.S. (Chief Valuer, Inland Revenue), Mr. H. C. Webster (Official Arbitrator Mr. Walter Tapper, A.R.A. (President Royal Institute of British Architects), Lt.-Col. A. R. Heneage, D.S.O., M.P., (Chairman Central Chamber of Agriculture), Mr. F. G. Hughes (Secretary Queen Anne's Bounty), Sir Theodore Chambers, K.B.E., His Worship The Mayor of Holborn (Councillor A. J. Clark, J.P.), Mr. C. R. Bradbourne (Official Solicitor Supreme Court of Judicature), Mr. B. W. Adkin (Principal, College of Estate Management), Mr. R. C. Hadland, M.A. (Secretary, College of Estate Management), Sir Joseph McConnell, Bart., Sir H. Trustram Eve, K.B.E., Sir William H. Wells, F.S.A. (Past President), Mr. W. Waite Saunderson, C.B.E. (Past President), Mr. Francis H. Rex (Past President), Mr. Ralph H. Brady, M.B.E. (Past President), Mr. Arthur C. Driver (Vice-President), Mr. J. Edward Kitchen (Vice-President), Mr. Arthur W. Brackett, J.P. (Past President), Mr. J. George Head, J.P. (Past President), Mr. John Francis, D.S.O., Mr. H. Mordaunt Rogers (Past President), Mr. J. Seagram Richardson (Past President), Mr. J. H. Townsend Green (Past President), Sir Arthur G. Dilley, M.B.E., J.P., Mr. F. W. Parsons, Mr. Chas. Benton (Past President), Mr. Bartlet St. G. Bower, Col. W. Anderson, D.S.O., M.C., His Worship The Mayor of Southwark (Councillor W. F. Castle, J.P.), Major V. B. Rogers, D.S.O., M.C., Mr. F. J. Bigwood (Past President), Mr. H. N. Boustread (Chairman, N. & N.W. London Branch), Mr. S. J. Chesterton, M.B.E., Mr. F. Colebrook (Chairman, City Branch), Mr. W. H. T. Collings (Hon. Secretary, Kent, Surrey and Sussex Branch), Capt. W. T. Cresswell, Mr. J. Davey (Chairman, South East London Branch), Mr. E. M. Dee, J.P., Mr. W. M. Eadon, Mr. E. W. Eason, Capt. C. V. M. Evans, M.C., Mr. A. M. Trustram, Mr. C. Roland Field (Vice President), Mr. John Francis, D.S.O., Mr. W. Gambling (Chairman East Anglian Branch), Mr. W. Gibson, D.S.O., Mr. E. B. Glasier, T.D., Mr. J. Chas. Goldsack (Chairman, Kent, Surrey and Sussex Branch), Mr. F. B. Gurney, Mr. H. N. Harding, M.C., Mr, William Harding, O.B.E., Mr. H. G. Head, M.A., Mr. J. G. Head, J.P. (Past President), Mr. H. D. Kellaway, Mr. H. L. Laurence, Mr. C. H. Leftwich (Hon. Secretary, Liverpool etc. Branch), Mr. M. C. Liell, Mr. Henry F. Lofts, Mr. D. R. L. Lowe, Sir Basil E. Mayhew, K.B.E. (Mr. Jas. S. Motion (Past President), Mr. Graham Mould, Mr. Walter P. Norton, Mr. R. H. Purves, Mr. Geo. F. Page, J.P. (Past President), Mr. F. N. Rex (Hon. Secretary, N. & N.W. London Branch), Mr. W. H. Robinson, Mr. Frank Rye, M.P., Mr. T. Walter Saint, Mr. F. Lydall Savill, Mr. J. Shakespear (Chairman, Midland Counties Branch), Mr. W. J. Sherlock (Chairman, Manchester Branch), Mr. O. R. A. Simpkin, C.B., C.B.E., Mr. Sydney A. Smith, Mr. L. T. Snell, Capt. C. E. Street, O.B.E. (Hon. Secretary, West London Branch), Mr. Wm. Thomson, Mr. Edmund Walton, Major A. J. Jones-West, O.B.E., T.D., Mr. G. Weston (Chairman, West London Branch), Mr. C. C. O. Whiteley, O.B.E., T.D., D.L., Mr. J. H. Wiggington (Chairman S.-W. London Branch), Mr. W. Windrum (Chairman East London Branch), Mr. W. W. Withers, Mr. Leslie, S. Wood, Mr. R. M. Wooley, Mr. C. E. Young (Hon. Secretary Eastern London Branch), Mr. E. W. Blake, C.B.E. (Secretary of the Institute), Mr. F. M. Sydenham (The Assistant Secretary) and Mr. P. W. Ford.

The loyal toasts having been duly honoured, Sir H. TRUSTRAM EVE, K.B.E. (a member of the Council) submitted the "Bench and Bar," with which the name of Mr. Justice Eve was associated. After referring to the number of descendants of the Eves present at that dinner, he stated that on three occasions he had been taken for the judge himself. The first was at a little agricultural show in North Wales, the result of which was that he received an invitation to luncheon (Laughter.) On another occasion recently a certain vicar asked him to become a churchwarden, and after he had declined the honour it turned out that he was again mistaken for Mr. Justice Eve. Addressing himself, however, to the toast itself, he thought they should all appreciate it when members of the Bench night after night were good enough to attend on such occasions. He thought that in the British Empire character came from and rests upon our clean tradition of justice and they ought to thank those now on the Bench who maintained it. In referring to the Bar he coupled with the toast the name of Mr. Stafford Cripps, but he would just like to have an opportunity of telling the Bar collectively what he thought of cl. 4 of the Rating and Valuation (Amendment) Bill. (Laughter.)

The Hon. Mr. Justice EVE, replying for the Bench, said that he hoped that as it was not the first, it certainly would not be the last time when he was called upon to respond to that toast. No one could fail to realise how kindly were the sentiments, how perfect the confidence, and how constant the support extended to the judiciary, and no one who was participant in those confident assurances could possibly fail to realise how stimulating is praise, how encouraging is appreciation. He would like, however, to tell them all for their private information that collectively the members of the Bench were rather more attractive then individually. For among those who knew them best they live in an almost asphyxiating atmosphere of pungent and caustic criticism. Their weaknesses, mannerisms, mistakes and even their judgments were freely canvassed, adding (amidst laughter) that he might add that in the domestic circle each of them was relegated to an appropriate position of senile inferiority. Looking down those tables, seeing each lined with an avenue of well-preserved, well-formed, well-conditioned and good-looking satisfied men, he recalled the æsthetic figures at a gathering forty-eight hours previously of members of his own profession, their pinched and pale faces, their retroussé and complex fronts and general anæmic condition, which forced him to the conclusion that either the profession represented by the Institute was greatly over paid or the legal profession was grossly unrewarded. He hoped that they would lend their kind aid to further the efforts which some unknown individual began a few evenings ago to secure an appreciable addition to judicial salaries. On the chance that the legislation when it came would be retrospective he undertook to instruct anyone present to offer by auction his twenty years' arrears at a very low reserve. (Loud laughter.)

The Hon. R. STAFFORD CRIPPS, K.C., said he wondered whether he ought to honour members by adopting their own methods or by employing the methods of his own profession For instance, he might say, "Gentlemen I will take the conditions of sale as read, I see there is an excellent company assembled. All the stock that will come into the ring to-day is entered in the herd-book of the Auctioneers and Estate Agents Institute, and the secretary is in attendance to give particulars of pedigrees if desired." (Laughter.) On the other hand, he might say, "My learned leader has already so fully explored the position that there is but little for me to say." As the latter was generally the introduction to a speech of some three or four hours he thought it would not be altogether appropriate to the present occasion. There was one thing he admired about the members of their profession, and it was the skill with which their controlled imagination was brought to bear in compensation cases. But seriously, it was not only for their imagination but also for the great help which the members of the legal profession derived from the members of the auctioneering profession in their work which made them fully realise their value, as well as their loyal assistance. (Applause.)

The Right Hon. Viscount SUMNER, K.C.B., then proposed "The Auctioneers and Estate Agents Institute of the United Kingdom," coupling with it the name of the President (Mr. Alfred Burrows). He fully agreed with what had been stated, not only as to the value of the Institute, but as to the special gift of imagination which their members displayed in

the witness-box, which no doubt explained the reluctance of some of them to be cross-examined effectively. Mr. Justice Eve had said that he looked to them and their influence to obtain some modest increase in judicial salaries. All he (the speaker) would say was that if the members were influential enough to do that, they could do anything. (Laughter.) Among the modern buildings in London he thought there was no architecture so elegant as the most charming building which they had erected in Lincoln's Inn Fields. Quite sincerely he thought they were the fortunate possessors of a gem of architecture. The Institute had undoubtedly become a useful and powerful one. It had enforced discipline, promoted education, encouraged the beginner, helped him to appointments, and carefully instructed him in his professional work. He thought that it was very largely to them that the country had to look for sound practical guidance in the passing from the old landed system which they loved and whose disappearance everyone regretted. He only hoped it would be succeeded by some other system, if not more attractive, perhaps equally good, but more suited to modern demands. Under the admirable system which had been established and with the guidance of that excellent Institution, the College of Estate Management, he was given to understand that they were thoroughly acquainted with the Rent Restriction Acts. All he could add was that there were others present who were not. (Laughter.) Heaven forbid that he should speak disrespectfully of an Act of Parliament, and therefore they must understand that he fully expected that the Rent Restriction Acts were conceived in wisdom, framed with skill, and intended to some inscrutable but doubtless certain good. In conclusion, his lordship said that the Auctioneers' Institute was one of the most important of the professional bodies which contributed through the regularising and integrity of professional practice to the national welfare. (Applause.)

The PRESIDENT, in responding, said it was always a pleasure and a privilege to respond to that toast, and he felt particularly gratified that it had been proposed that evening by one holding the exalted position of Lord Sumner. He had done his best to trace the history of the auctioneer and estate agent from ancient times, and found that the earliest occasions recorded in Britain were those of British women who were offered by the Romans by auction as spoils of war. In those days, he was told, that the auctioneer was remunerated in kind, and assuming that his modest remuneration—and it always was a modest remuneration, which had to include his travelling and out-of-pocket expenses—was 10 per cent.—he would have a very nice collection by the end of the year. (Laughter.) With regard to the earliest origin of estate agents, the only record he could find was in the book of Genesis where there was a lengthy account of the purchase by Abraham of the field of Machpelah by private treaty. (Laughter.) He had tried to forecast the future, and supposed that a time would come when all the wicked owners of urban property would have been expropriated and the grasping landowners would have all their land nationalised. Then there would be no auctioneers of real estate, the auctioneers of live stock and chattels coming afterwards would be salaried officials paid by the Government or the municipality. A few days ago leave was refused to introduce into the House of Commons a private member's Bill dealing with the registration of landed property agents. The Bill was opposed on the ground that there were three well-recognised and well-established organisations representing the profession which would be adversely affected, namely, the Surveyors' Institute, the Auctioneers' Institute, and the Land Agents' Society, and although the Bill contained much with which those bodies could agree, there was also much of it they were not likely to approve. The attitude of the Institute in the matter could best be expressed by saying that legislation dealing with the discipline of a profession ought not to be introduced unless it was the result of an agreement of the several representative organisations of that profession.

In conclusion, he thanked the past President and all the members of the Council for their unfailing help, whilst the great services of their excellent secretary, Mr. Blake, it would be impossible to overrate. He had always been most helpful with his valuable advice and assistance, ably assisted by his excellent assistant secretary, Mr. Sydenham, and by Mr. Ford, and indeed by all the members of the staff. He wished to express his heart-felt thanks for the kindness he had received from his fellow members during one of the most memorable years of his life. (Loud applause.)

Mr. ARTHUR C. DRIVER (Vice-President), proposing the health of "The Guests," said how pleased they were to have with them that night Lord Sumner, who was called to the Bar forty-five years ago. He mentioned another distinguished guest, the President of the Royal Institute of British Architects, also Lord Mayo, the President of the Land Agents Society.

In conclusion, he coupled with the toast the name of Mr. J. M. Gatti, the Chairman of the London County Council.

Mr. GATTI returned thanks.

Mr. Frederick Arthur's Orchestra delighted the company with selections during the evening. The dinner was well arranged throughout, and when it is remembered that another similar function was taking place in an adjoining room, where Mrs. Burrows was entertaining the wives of the members of the council to dinner, Mr. Blake, assisted by his trusty lieutenant, Mr. Sydenham, must have had their hands full, but they are to be congratulated on a thoroughly successful evening.

Legal Notes and News.

Honours and Appointments.

Mr. ROLAND BURROWS, LL.D., Barrister-at-law, has been appointed Recorder of Cambridge in succession to Mr. Justice Humphreys. Mr. Burrows won the Barstow Scholarship in 1903, and was called by the Inner Temple in 1904.

Mr. FERDINAND PHILIP MAXIMILIAN SCHILLER, K.C., has been appointed Recorder of Southampton in succession to Mr. Justice Charles. Mr. Schiller was called by the Inner Temple in 1893, and took silk in 1913.

Mr. G. FOSTER ROGERS, Solicitor, Chief Assistant Solicitor and Assistant Clerk of the Peace to the North Riding County Council, has been appointed Chief Assistant Solicitor to the Surrey County Council.

Mr. R. F. MUSCOTT, Solicitor, has been appointed Clerk to the Justices for the Manchester Division of Lancaster in succession to his father who died recently and with whom he acted for some years as joint clerk.

The LORD CHANCELLOR has appointed Mr. Registrar F. G. GLANFIELD, LL.B., of Birmingham County Court, to be Senior District Registrar of the High Court at Birmingham, and Senior Registrar of Birmingham County Court in the place of the late Mr. Registrar A. L. Lowe, C.B.E., M.A., LL.B.

Mr. HERBERT S. SYRETT, C.B.E., LL.B., solicitor, of the firm of Syrett & Sons, of 115 Moorgate, E.C.2, and Sydenham, has been appointed a director of The Abstainers & General Insurance Co., Limited, of 142, Edmund-street, Birmingham, and Insurance House, Kingsway, London, W.C. Mr. Syrett was admitted in 1901.

Resignations.

Mr. H. R. GILES, Solicitor, Clerk to the Ellesmere Urban District Council, has resigned after seventeen years' service.

Mr. A. E. WESTON, of the Town Clerk's Department, Nottingham, recently completed fifty years' service under the City Corporation, having received his first appointment on the 11th February, 1878.

Wills and Bequests.

Mr. Charles James Blackburn Lowe, Brooks' Bar, Manchester, at one time a lawyer and afterwards living the life of a recluse, who died in January, 1927, aged sixty-nine years, left estate now valued for probate at £25,581 gross, with a net personalty £25,221.

Various stories were current for some time after his death that he had left considerably over £100,000.

His will was lately the subject of the action *Dr. Barnardo's Homes and Another* v. *Tennant and Others*, in which the President of the Probate Court, on 19th December last, pronounced for the force and validity of a document dated 3rd October, 1915, under which the testator left all his property to Dr. Barnardo's Homes, and probate has been granted to Dr. Barnardo's Homes National Incorporated Association, of Stepney-causeway, E.

Mr. Thomas Murray Mackay, solicitor and Writer to the Signet, Edinburgh, left personal estate in Great Britain of the gross value of £103,599.

Mr. Joseph Frederick Read, of Watermillock House, Watermillock, near Penrith, and formerly of Liverpool, solicitor, who died on 8th November, 1927, has left £102,536, with net personalty £99,826. The testator left £100 to his former clerk, John Chadwick Billington, £50 each to Jane Harries, cook, and Frederick James Jackson, gardener, and £30 to Nellie Thompson, housemaid, if in his service at the time of his death; and one year's wages to his other domestic

servants who have been with him for twelve months. The residue of the property is left on trust for Mrs. Read for life. On her death he gives £1,000 to the Liverpool Open-Air Hospital for Children; £500 to the Samaritan Hospital; £500 to the Wallasey Cottage Hospital; £500 to the Liverpool Bluecoat Hospital; £500 to the Royal Liverpool Seaman's Orphan Institution; £200 to the Eye and Ear Infirmary, Liverpool; £200 to Frederick J. Jackson, gardener, if in the service of Mrs. Read at her death; and an annuity of £50 to Jane Harries, cook, on like conditions. One-half of the residue he leaves for charitable or philanthropic institutions within a radius of ten miles from the Town Hall of Liverpool, as the executors may think fit.

Mr. Justice Humphreys.

Welcome at the Old Bailey.

Mr. Justice Humphreys took his seat for the first time at the Old Bailey on Thursday, 1st inst., presiding over No. 1 Court, where many famous trials have been held. As Sir Travers Humphreys, Senior Counsel for the Treasury, the new judge appeared in a number of those trials, and his last case was opened in the same court just over a fortnight ago.

When he came on the Bench he was accompanied by the Lord Mayor (Sir Charles Batho), the Recorder (Sir Ernest Wild, K.C.), and the Sheriffs. Sir Archibald Bodkin, the Public Prosecutor, was also present. The Lord Mayor briefly addressed the barristers. "Members of the Bar," he said, "we are met here this morning under very exceptional circumstances. I have no intention of making a speech, but I think it only right in my capacity as Lord Mayor that I should say how delighted we are to welcome his Majesty's Judge, Sir Travers Humphreys, here this morning."

Mr. Percival Clarke, who succeeded to the position of Senior Treasury Counsel when Sir Travers was appointed to the Bench, voiced the greetings of the Bar.

Mr. Justice Humphreys briefly replied. "I am much obliged," he said, "for the welcome which has been given me on my return in this capacity to the court in which I have practised for thirty-eight years. As the Lord Mayor has correctly said, this is not an occasion for speeches. We will now proceed to the business of the day."

A Solicitor Suspended.

The Committee of The Law Society constituted under the Solicitors Acts, 1888 and 1919, and consisting of Mr. Pinsent (chairman), Mr. Carslake, and Mr. Hickley, on Friday suspended Charles Douglas Tharp, of 18, Devonshire-street, Bishopsgate, E.C., from practising as a solicitor for two years on the ground that he had misappropriated £26 5s., the property of a client.

A Jury's Compliment.

When a jury was discharged from further attendance at the London Sessions on Thursday, the 23rd ult., the foreman at once rose and remarked: "The jury wish me to say how much they have been impressed by the manner in which justice is administered in this court, and, particularly, the merciful spirit your lordship has shown to the prisoners."

Sir Robert Wallace: Thank you.

Court Papers.

Supreme Court of Judicature.

Rota of Registrars in Attendance on

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Russell.
Monday, Mar. 12	Mr. Ritchie	Mr. Hicks Beach	Mr. Hicks Beach	Mr. More
Tuesday ...13	Bloxam	Synge	*Bloxam	Hicks Beach
Wednesday .14	Jolly	More	More	Bloxam
Thursday ..15	Hicks Beach	Ritchie	*Hicks Beach	More
Friday 16	Synge	Bloxam	Bloxam	Hicks Beach
Saturday ...17	More	Jolly	More	Bloxam

Date.	Mr. Justice Romer.	Mr. Justice Astbury.	Mr. Justice Tomlin.	Mr. Justice Clauson.
Monday, Mar. 12	Mr. Bloxam	*Mr. Ritchie	Mr. Synge	Mr. Jolly
Tuesday ...13	*More	Synge	*Jolly	Ritchie
Wednesday .14	*Hicks Beach	*Jolly	*Ritchie	Synge
Thursday ..15	*Bloxam	Ritchie	*Synge	Jolly
Friday 16	*More	*Synge	Jolly	Ritchie
Saturday ...17	Hicks Beach	Jolly	Ritchie	Synge

* The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 22nd March, 1928.

	Middle Price 7th Mar.	Interest Yield. £ s. d.	Yield with Redemption. £ s. d.
English Government Securities.			
Consols 4% 1957 or after	85¾	4 13 6	—
Consols 2½%	55⅛	4 14 0	—
War Loan 5% 1929-47	102	4 18 0	4 18 9
War Loan 4½% 1925-45	97½	4 12 6	4 16 6
War Loan 4% (Tax free) 1929-42	101¼	3 19 0	3 19 6
Funding 4% Loan 1960-1990	89¼	4 10 0	4 14 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93½xd	4 6 0	4 7 0
Conversion 4½% Loan 1940-44	97½	4 12 0	4 16 0
Conversion 3½% Loan 1961	76⅜xd	4 11 0	—
Local Loans 3% Stock 1921 or after	64¼xd	4 13 0	—
Bank Stock	256	4 12 0	—
India 4½% 1950-55	93½xd	4 17 0	5 0 0
India 3½%	70½xd	4 19 0	—
India 3%	60½xd	4 19 0	—
Sudan 4½% 1939-73	94	4 15 6	4 17 0
Sudan 4% 1974	84	4 15 0	4 17 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	85	3 13 0	4 6 0
Colonial Securities.			
Canada 3% 1938	86	3 12 0	4 18 0
Cape of Good Hope 4% 1916-36	95	4 4 6	5 0 6
Cape of Good Hope 3½% 1929-49	82	4 6 0	5 0 0
Commonwealth of Australia 5% 1945-75	99	5 1 0	5 2 6
Gold Coast 4½% 1956	94	4 15 6	4 17 6
Jamaica 4½% 1941-71	94	4 17 0	4 18 6
Natal 4% 1937	93xd	4 5 0	5 0 0
New South Wales 4½% 1935-45	91	4 19 0	5 7 0
New South Wales 5% 1945-65	99	5 1 0	5 3 0
New Zealand 4½% 1945	96	4 13 0	4 17 6
New Zealand 5% 1946	102⅜	4 18 0	4 16 6
Queensland 5% 1940-60	97xd	5 3 0	5 3 0
South Africa 5% 1945-75	103	4 17 6	5 0 0
South Australia 5% 1945-75	98½	5 1 6	5 0 0
Tasmania 5% 1945-75	101	4 19 0	5 0 0
Victoria 5% 1945-75	99	5 1 0	5 0 0
West Australia 5% 1945-75	99	5 1 0	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	63	4 15 6	—
Birmingham 5% 1946-56	103¾	4 16 6	4 17 0
Cardiff 5% 1945-65	101¼	4 19 0	4 18 0
Croydon 3% 1940-60	70	4 5 6	5 0 0
Hull 3½% 1925-55	77¾	4 9 6	5 0 0
Liverpool 3½ Redeemable at option of Corporation	73	4 16 0	5 0 0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4 12 6	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64½	4 13 6	—
Manchester 3% on or after 1941	63	4 14 6	—
Metropolitan Water Board 3% 'A' 1963-2003	64xd	4 13 0	4 17 0
Metropolitan Water Board 3% 'B' 1934-2003	65	4 12 6	4 15 6
Middlesex C. C. 3½% 1927-47	83	4 5 6	4 17 0
Newcastle 3½% Irredeemable	72	4 17 0	—
Nottingham 3% Irredeemable	63	4 15 6	—
Stockton 5% 1946-66	101	4 19 0	4 19 0
Wolverhampton 5% 1946-56	102	4 19 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	81½	4 18 6	—
Gt. Western Rly. 5% Rent Charge	100	5 0 0	—
Gt. Western Rly. 5% Preference	99	5 1 0	—
L. & N. E. Rly. 4% Debenture	78	5 2 0	—
L. & N. E. Rly. 4% Guaranteed	75	5 6 6	—
L. & N. E. Rly 4% 1st Preference	70½	5 14 0	—
L. Mid. & Scot. Rly. 4% Debenture	80½	5 0 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	79½	5 0 0	—
L. Mid. & Scot. Rly. 4% Preference	75½	5 6 0	—
Southern Railway 4% Debenture	80	5 0 0	—
Southern Railway 5% Guaranteed	98xd	5 2 0	—
Southern Railway 5% Preference	93	5 7 6	—

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